

**REQUEST FOR PROPOSALS**

**ENGINEERING SERVICES FOR**

**SIXTH AND CANAL PUMP STATION**

**SHORT-TERM IMPROVEMENTS PROJECT**

**CITY OF READING**

**RFP # 2014-6**



## **TABLE OF CONTENTS**

TABLE OF CONTENTS.....	i
I. REQUEST FOR PROPOSAL .....	3
II. INTRODUCTION .....	3
A. GENERAL BACKGROUND.....	3
B. SCOPE OF SELECTED ENGINEER’S BASIC SERVICES.....	4
C. AVAILABLE BACKGROUND INFORMATION .....	9
D. PROJECT SCHEDULE.....	9
III. PROPOSAL CONTENT .....	10
A. QUALIFICATIONS AND TECHNICAL PROPOSALS .....	10
B. COST PROPOSAL.....	11
C. ASSIGNMENT OF KEY STAFF .....	12
D. SUPPLEMENTARY DOCUMENTS .....	12
IV. PROPOSAL PROCESS.....	12
A. PRE-PROPOSAL CONFERENCE .....	12
B. PROPOSER’S CLARIFICATION AND QUESTIONS .....	13
C. CONFIDENTIALITY OF THE PROPOSAL .....	13
D. EVALUATION OF PROPOSALS.....	14
E. PROPOSAL SUBMISSION.....	15
F. WITHDRAWAL OF PROPOSALS.....	15
G. PROCEDURE FOR REVIEW OF PROPOSALS.....	15
H. WINNING PROPOSAL .....	16
V. CONTRACT TERMS REQUIRED TO COMPLETE THE PROJECT .....	16
A. INDEPENDENT CONTRACTOR AND INSURANCE .....	16
B. EQUAL EMPLOYMENT OPPORTUNITY .....	17
C. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED.....	17
D. ALTERATIONS OR MODIFICATIONS .....	17
E. SUBCONTRACTS .....	17
F. RIGHT TO AUDIT RECORDS .....	18
G. DISSEMINATION OF INFORMATION .....	18

H.	BUSINESS PRIVILEGE LICENSE AND TAX.....	18
I.	PERMITS / LICENSES.....	18
J.	OBSERVANCE OF LAWS, ORDINANCES AND REGULATIONS.....	18
VI.	RESERVATION OF RIGHTS .....	19

## **I. REQUEST FOR PROPOSAL**

The City of Reading (“City”) is soliciting proposals (each, a “Proposal”) from selected engineering firms (each, a “Proposer”) for the delivery of engineering services for the Sixth and Canal Pump Station Short-Term Improvements hereinafter referred to as the “Project”. The City reserves the right to award all, some or none of the engineering services set forth in this Request for Proposals (“RFP”) to any one or more Proposers based on the City’s review and assessment of the Proposals meeting the criteria set forth herein. In the event the City awards engineering services pursuant to this RFP, the Proposer selected by the City (the “Selected Engineer”) may lead one or more subcontractors (“Subcontractors”) to perform the services requested by the City pursuant to this RFP.

## **II. INTRODUCTION**

### **A. GENERAL BACKGROUND**

The City provides wastewater treatment and conveyance services for all or portions of the following municipalities (the “Contributing Municipalities”):

Alsace Township (through Muhlenberg township Authority)  
Bern Township  
Cumru Township  
Kenhorst Borough  
Laureldale Borough  
Lower Alsace Township (through Antietam Valley Municipal Authority)  
Mohnton Borough  
Mount Penn Borough (through Antietam Valley Municipal Authority)  
Muhlenberg Township (through Muhlenberg Township Authority)  
Robeson Township  
Shillington Borough  
Spring Township  
Wyomissing Borough

In order to operate and maintain the City’s sanitary sewer collection system and Fritz Island Wastewater Treatment Plant (collectively, the “Sanitary Sewer System”) while addressing and planning for capital improvements set forth in its June 28, 2013, capital improvements plan (“CIP”) submitted to the United States Department of Justice in connection with the City’s obligations pursuant to a Consent Decree lodged with the Eastern District of Pennsylvania in Civil Action No. 04-5696 (“Consent Decree”), the City is soliciting proposals for a consultant to perform specific Consent Decree-required tasks associated with the short-term improvement of its Sixth and Canal Pump Station (“6<sup>th</sup> Street P.S.”) as identified in the CIP. The CIP and Consent Decree are incorporated herein by reference and can be made available to the Proposers by the City upon request.

The City owns and operates the 6<sup>th</sup> Street P.S. as an integral component of its Sanitary Sewer System. The 6<sup>th</sup> Street P.S. conveys approximately seventy-five percent (75%) of the wastewater received at the City's Fritz Island Wastewater Treatment Plant. In addition to pumping, the wastewater is also screened and degritted at the 6<sup>th</sup> Street P.S. Ultimately, the Selected Engineer shall design, solicit bids and oversee the construction of all necessary capital improvements as necessary for the City to comply with its obligations with respect to the short-term improvements to the 6<sup>th</sup> Street P.S. required by the CIP.

Because the Selected Engineer will be designing capital improvements necessary for the City's compliance with the Consent Decree, time is of the essence for the Engineer's completion of all services set forth herein.

## ***B. SCOPE OF SELECTED ENGINEER'S BASIC SERVICES***

Engineering services shall include the design, permitting, code review, preparation of plans and specifications for bidding, management and oversight of the public bidding process, and engineering services during the construction phase for the Project.

1. Below is a general description of the physical improvements required to be designed by the Selected Engineer:

- a. Influent screening replacement. Two new influent screens are to be provided, each with a minimum peak flow design capacity of 60 million gallons per day ("MGD")
- b. Pista grit system repairs, renovation or replacement. The existing 20-foot diameter concrete grit removal tank is to remain. All mechanical devices should be replaced with new equipment. Modifications to reduce clogging and enhance efficiency of the existing grit handling system should be provided and the straightening vanes in the influent channel shall be removed. At a minimum, a fluidizing system for the grit hopper (air or water) shall be provided. Peak design capacity shall be at least 50 MGD with 95% removal of 2.65 Sp. Gr. Grit.

i. The following new ancillary equipment, including, without limitation, shall be provided:

- Grit pump
- Vacuum priming system
- Grit washer/classifier
- Screenings washer/compactor
- Screw conveyors with new layout so that grit and screenings are placed in dumpsters in lieu of on the ground
- Valves and piping
- Replace awning to provide additional height above equipment
- Heat trace and insulation for freeze protection

- c. Vortex breaker installation at each raw sewage pump inlet.
- d. Yard piping to support new improvements, including new water main connection.
- e. New gauges with isolation ring on each pump discharge.
- f. Relocation of SCADA system pressure sensor so that grease does not interfere with reading.
- g. Addition of air conditioning units for each pump VFD cabinet.
- h. Revise location of HVAC fresh air intake to pump room to access air from a more suitable location and revise air exhaust system to remove hot air from the area of the VFDs.
- i. Addition of a new double-walled NFPA rated aboveground fuel oil storage tank, ancillary equipment, and pad. New tank to be relocated to reduce load on the existing stone flood wall.
- j. Repair of stone flood wall at the existing fuel oil storage tank.
- k. Existing retaining wall to be evaluated for its ability to withstand flood elevation to top of wall. Based upon evaluation, design fortifications needed to meet loadings, including, without limitation, full depth flood elevation.
- l. Local site revisions and drainage system to be provided to drain water from the area to further reduce load on the retaining wall.
- m. Controls and SCADA System includes, without limitation, the following new equipment:
  - i. Update two (2) remote I/O control panels, Site “A” and Side “B”;
  - ii. Replace the GE 90-30 with the GE RX3i;
  - iii. Pump strategy to remain the same, SCADA screens to remain the same, need to be verified;
  - iv. Remove the Genius communications and replace with hard wire;
  - v. Replace two (2) operator interface terminals with new fifteen inch (15”) or larger terminals;
  - vi. Field installation of the listed equipment;
  - vii. Start-up and testing; and

viii. Wiring diagrams to be included.

Note that the Optimum Controls Corporation (“OCC”) is the City’s SCADA system integrator and is very familiar with the existing pump station and City’s SCADA system. OCC shall be retained by the Selected Engineer as a subcontractor for the purpose of reviewing and approving equipment specifications and shop drawings. The construction specifications shall require the applicable Multiple Prime Contractor to hire OCC as a subcontractor to perform the integration. Contact information for OCC is as follows:

Optimum Controls Corporation  
1301 Rosemont Blvd.  
P.O. Box 14174  
Reading, PA 19612  
Phone: (610) 375-0990

- n. As part of any mechanical rehabilitation or upgrade, provisions are to be made by the Selected Engineer for the inspection, repair and coating of the concrete structures (e.g., channels, tanks, etc.).
2. Study Phase. The Study Phase shall include, without limitation, any necessary evaluations of the existing infrastructure and code review and meetings with any building code officials to ensure that the new design elements are in compliance with all applicable federal, state and local laws, codes and ordinances. Without limiting the generality of the foregoing, the Selected Engineer shall:
- a. Perform geotechnical borings and investigations in and around the 6<sup>th</sup> Street P.S. as necessary to design the Project and identify existing conditions in and around the 6<sup>th</sup> Street P.S. A geotechnical report prepared by TRC Engineers, Inc., on January 13, 2012, on behalf of the City in connection with the construction of a new 42” force main from the 6<sup>th</sup> Street P.S. to the wastewater treatment plant is available upon request.
  - b. Perform all required site investigations to verify interfaces with the existing City of Reading piping, electrical and instrumentation.
  - c. Perform any structural analysis of the 6<sup>th</sup> and Canal P.S. necessary to determine the existing condition of the facility to accommodate the improvements to be designed by the Selected Engineer.
  - d. Evaluate the impact environmental conditions associated with the 6<sup>th</sup> and Canal P.S. in order to identify potential issues associated with contamination that has been identified in the soils and groundwater at the site. The City has undertaken various sampling events at site and will make such data and reports available upon request.

- e. Consult with all authorities having jurisdiction regarding the Project to determine the applicable laws and regulations that will apply to facilitate the design of the Project in accordance therewith.
3. Preliminary Design Phase. In accordance with the requirements set forth in the Contract, the Selected Engineer shall prepare Preliminary Design Documents (30% Design), which incorporating all improvements required by the CIP in accordance with all applicable laws and permit conditions based on the information derived during the Study Phase. An update to the Project Schedule and opinion of probable construction costs shall also be provided.
4. Final Design Phase. Based on the City's approval of the Preliminary Design Documents, the Selected Engineer shall obtain all necessary permits and approvals (except for building permits which will be procured by the construction contractors.
- a. The Selected Engineer shall complete the necessary permitting procedures to ensure that the Project design meets the requirements of the Pennsylvania Department of Environmental Protection ("PADEP"), United States Army Corps of Engineers ("USACE"), Berks County Soil Conservation District, United States Environmental Protection Agency, and any and all other applicable regulatory authorities or applicable laws. Without limiting the generality of the foregoing, the Engineer shall be responsible for the permitting processes, which include, without limitation, the following processes that may be required depending on the Engineer's design of the Project:
    - i. Preparation of a Joint Permit Application to the USACE and PADEP for disturbance of wetlands and waterways. An investigation to identify and delineate wetlands and other waters of the United States and the Commonwealth of Pennsylvania within the proposed Project area has been previously conducted by the City. A copy of the final determination from the US Army Corp of Engineers with respect to the extent of regulated wetlands are available upon request. The Selected Engineer shall obtain any necessary approvals for the Project as may be required under Section 404 of the Clean Water Act.
    - ii. Preparation of an Erosion & Sedimentation Control Plan and submission to the Berks County Soil Conservation District for approval.
    - iii. Complete the Pennsylvania Natural Diversity Inventory ("PNDI") review process for the proposed Project area. Prior responses in connection with PNDI review processes have indicated that the redbelly turtle may be present in the proposed Project area. In response to that information, the City conducted a Phase I Habitat Assessment for the redbelly turtle and the conditional approval with respect to construction on a prior construction project are available upon request. The Selected Engineer shall obtain all



necessary approvals for the Project from authorities with jurisdiction over endangered or threatened species.

iv. Obtain any necessary approvals associated with the Section 106 review process under the National Historic Preservation Act.

v. Obtain all necessary approvals, permits and certifications associated with the new and existing oil storage tanks including, but not limited to, registration of the new tank with PADEP and labor and Industry. Also, proper decommissioning and disposal of the existing tank as required by regulatory agencies.

b. The Selected Engineer shall prepare Final Design Documents in support of the City's solicitation of multiple prime contractors (if required by the Pennsylvania Procurement Code) for the construction of the Project. The Final Design Documents shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the work, including, but not limited to, the work required for the structural, general, mechanical, electrical, plumbing, fire protection and site work construction and the necessary general conditions of the construction contract. A final update to the Project Schedule and opinion of probable construction costs shall be provided to the City for review. Following the City's approval of the Final Design Documents, the Selected Engineer shall utilize the Final Design Documents to prepare a complete set of bidding documents necessary for the City to procure construction contractor(s) in compliance with applicable laws and codes. To the extent practicable, the Selected Engineer shall prepare the bidding documents to include unit prices and alternates to facilitate the City's evaluation of bids and allow for flexibility to approach meeting the City's budgetary limitations. The City will assist the Selected Engineer by providing example templates of the general conditions specifications, and other trade disciplines as available, for the Selected Engineer's use. The requested scope of services for the Engineer for this phase of work is further defined in the Contract.

5. Bidding Phase. The Selected Engineer will assist the City in (1) soliciting qualified contractors and obtaining competitive bids for construction of the Project based on the Final Design Documents; (2) responding to all bidder questions and preparing necessary addenda to address such questions or provide clarifications or revisions to the Final Design Documents; (3) confirming responsiveness of the bids; (4) determining the successful bid, if any; and, (5) awarding and preparing contracts for construction. The requested scope of services for the Selected Engineer for this phase of work is further defined in the Contract.

6. Construction Phase. The Selected Engineer shall advise and consult with the City throughout the course of the construction activities for the Project. Throughout the course of the Construction Phase, unless specified otherwise by the City, the Selected Engineer

shall visit the site not less than once per week while work is in progress, and as often as necessary and appropriate to observe the site and Work; to familiarize itself with the progress and quality of the Work; promptly respond to Requests for Information, and to determine for the City's benefit and protection if the Work is proceeding in accordance with the terms and intent of the Construction Documents and Construction Schedule. The requested scope of services for the Selected Engineer for this phase of work is further defined in the Contract.

7. Post Construction Phase. Within one month of the completion of the Construction Phase, the Selected Engineer shall visit the Project site with the Owner to evaluate whether any portion of the work is defective or requires correction by the Contractor. The requested scope of services for the Selected Engineer for this phase of work is further defined in the Contract.

### ***C. AVAILABLE BACKGROUND INFORMATION***

Technical documents associated with the Project may be made available by the City to the Proposers if deemed necessary by the City for the Proposers to prepare a Proposal and evaluate the services required herein. The means of delivering the technical documents associated with this RFP may include e-mail transmittal, upload to a secure ftp site for downloading by the Proposers, or overnight mailing of a CD.

The Proposers shall treat all information disclosed by the City or its agents to the Proposers pursuant to this RFP as confidential information and shall not disclose such confidential information except to the extent required by applicable laws. However, the Proposer shall not be obligated to treat any information as confidential if it (a) is available to the public as of the date hereof, (b) becomes available to the Proposer on a non-confidential basis from a source other than the City or its agents; or (c) is developed independently by the Proposer.

In addition, each Proposer must submit in its Proposal a list detailing the specific information, records and documents, if available, it will need from the City to perform the Project in the event that the Proposer is selected.

### ***D. PROJECT SCHEDULE***

The Selected Engineer shall begin work upon the City's issuance of a Notice to Proceed, which will be issued after the Contract has been fully executed. The initial activities of the Selected Engineer shall be to work with the City to review the Project Schedule and budget and develop and present a work approach to the City.

A proposed schedule for the completion of the various phases of the Project is set forth in Attachment 1 to this RFP and is incorporated herein ("Project Schedule"). Each Proposer shall provide a detailed schedule for completion of the various subtasks including these milestones as part of the Proposal and discuss its ability to meet the proposed schedule in Attachment 1.

### **III. PROPOSAL CONTENT**

While there is not a specific page limitation, the Proposals shall provide a straightforward, concise description of the Proposer's ability to fulfill the requirements of the Project, as set forth in this RFP. In order to ensure a uniform review process and to obtain the maximum degree of comparability, it is required that the Proposals include the information and be organized in the manner specified below.

#### **A. *QUALIFICATIONS AND TECHNICAL PROPOSALS***

As a component of the Proposal, each Proposer shall submit a "Technical Proposal" which shall include, without limitation, the information outlined in this RFP. The response under this section shall include the following:

1. Company Overview: Provide an overview of the prime firm and identify the contact information for a point of contact, including a physical address, phone number and email address, for questions and legal notices.
2. Project Qualifications and Experience
  - a. The Proposer shall demonstrate its knowledge and understanding of the Project with specific examples of similar efforts. Include a summary of each such relevant project experience by the Proposer.
  - b. The Proposer shall submit at least three (3) of its clients (including names and phone numbers) as references and describe the relevant project for such clients.
  - c. The Proposer shall indicate its local knowledge and understanding.
  - d. The Proposer shall identify if the County of Berks or any of the Contributing Municipalities (including any Authorities thereof) are current clients of the Proposer or any Subconsultants.
3. Engineering Team: Organization charts identifying (a) the Principal in Charge, (b) Project Manager, (c) a description of staff roles, (d) a description of Subcontractor roles, and (e) the qualifications, experience and office address for each proposed individual that the Proposer will use to perform the Project (the "Engineering Team"). Résumés, limited to two (2) pages each, for each individual on the Engineering Team shall be included in an appendix to the Proposal.
4. Project Approach: The Proposer shall describe its understanding and approach to completing the Project, including the following:
  - a. The Proposer shall detail the scope of work to be provided under each phase of work.

- b. The level of effort to complete the Project shall be based on an assumed number and extent of activities over the full Project time frame.
  - c. All engineering services necessary to complete the Project and not specifically identified in this RFP, including any impacts on the Schedule.
- 5. Schedule: The Proposer shall also provide a preliminary Project schedule showing the planned approach, key task activities and milestones necessary to meet the Project schedule. The Proposer shall identify significant potential risks that may impact the schedule with recommendations for the mitigation and/or elimination of such risks.
- 6. Financial Soundness of Proposer: The Proposer's most recent certified annual report, including balance sheets and profit and loss statements, must be submitted with the Proposal. All information pertaining to the financial soundness of the Proposer shall be marked by the Proposer as "Confidential". The City of Reading will contract only with a Proposer found to be financially sound. In addition, the Proposer shall notify the City if there is (are) a major claim(s) against the Proposer that could affect its ability to perform the Project.
- 7. Exceptions: The Proposer shall specify any exceptions or objections taken to this RFP or the Contract for the City to appropriately score the Technical Proposal. The provision or language the Proposer takes exception to shall be specifically identified (including a citation to the paragraph such provision or language is found) with the Proposer's suggested modifications. Provisions not specifically identified as exceptions or objections are identified in this section of the Proposal, it will be understood that the Proposer takes no exception to the RFP or the Contract.

## ***B. COST PROPOSAL***

Payment for services under this Project shall be on a time and materials (T&M), not-to-exceed fee basis. The Proposal shall include a separately sealed "Cost Proposal" which shall identify a schedule of the proposed hourly billing rates for all members of the Engineering Team as well as a total not-to-exceed fee for all of the Selected Engineer's services to complete the Project. The Proposer shall attach to the Cost Proposal Form a detailed spreadsheet showing the hours, labor costs, expenses and total cost for each phase and task of the Project. The Cost Proposal shall include a not-to-exceed budget for reimbursable expenses, including but not limited to mileage, tolls and document reproduction. The Cost Proposal shall also estimate all potential fees associated with obtaining all permits required to complete the Project in accordance with applicable laws. Expenses for telephone, FAX and computer charges will not be allowed. The Proposer's Cost Proposal shall be presented on the attached Cost Proposal Form attached hereto as Attachment 2. Any deviations, if required, shall be noted on the Cost Proposal Form.

If the Proposer anticipates services not specifically identified in this RFP which, in its opinion, will be required for the Selected Engineer to complete the Project, such services shall be described in

the technical proposal, with a general explanation of the services, a brief justification as to why such services may be required. The Proposer shall include a corresponding line item to each such services to identify the cost of supplying such services.

The Selected Engineer will invoice the City in accordance with the process set forth in the executed Contract for its performance of the Project. Unless otherwise approved in writing by the City's Managing Director, the Selected Engineer shall not be entitled to any payment from the City in excess of the not-to-exceed fee provided in the executed Contract.

The Proposer shall also provide a schedule of hourly billing rates in the event that the City requests, in writing, additional services be performed outside of the scope of services specified herein. Unless specifically set forth on the Cost Proposal Form and incorporated in the executed Contract, such hourly rates shall not be increase during the term of the Contract.

#### ***C. ASSIGNMENT OF KEY STAFF***

The key member(s) of the proposed Engineering Team must be identified and assigned to the Project and must remain assigned and available to the Project for its duration unless such person leaves the employment of the Selected Engineer or the City agrees in writing to modify the proposed Engineering Team. If a key member leaves the employment of the Selected Engineer during the course of the Project, the City must be notified immediately, and the Selected Engineer must submit the name and credentials of the person replacing the key member for approval by the City prior to that person starting work on the Project.

#### ***D. SUPPLEMENTARY DOCUMENTS***

The Proposer shall execute a Non-Collusion Affidavit, Non Discrimination Statement, Political Contribution Affidavit, and Certification of Non-Indebtedness to the City, as such documents are attached hereto as Attachment 3. Any Subcontractor identified in the Proposal shall also execute a Non Discrimination Statement and Political Contribution Affidavit, as such documents are set forth below. All such executed documents shall be included with the Proposal.

Each Proposer and any Subcontractors identified in the Proposal shall provide a completed Proposer's Statement for Public Disclosure, as such form is set forth below, with the Proposal.

### **IV. PROPOSAL PROCESS**

By submitting a Proposal, each Proposer certifies that it has read the complete RFP, understands the Proposal process and has full knowledge of the scope, nature and quality of work to be performed associated with this RFP and accepts and agrees to all provisions of this RFP.

#### ***A. PRE-PROPOSAL CONFERENCE***

A **mandatory pre-proposal conference** will be held at the Berks County Fire Training Center, 895 Morgantown Road, Reading, Pennsylvania, at 10:00 a.m. (local time) on March 11, 2014. The

purpose of the pre-proposal conference will be to discuss the project, answer any questions and facilitate a site visit to the 6<sup>th</sup> Street P.S. No statements made during the pre-proposal conference shall be binding on the City unless issued through an addendum.

### ***B. PROPOSER'S CLARIFICATION AND QUESTIONS***

To ensure fair consideration for all Proposers, the City prohibits communication to or with any City official, department director, division manager, employee, or the Project/Construction Manager related to this RFP prior to the submission of the Proposal with the exception of those questions relative to interpretation of specifications or the Proposal process.

Interpretations of the meaning of the RFP documents made to any Proposer orally shall not be binding on the City or any other Proposer.

The City is requesting that any questions or clarification requests be submitted in writing via e-mail, fax, or hand delivery by **2 p.m. (local time), March 17, 2014**. It is the City's intent to review these questions, and provide a response to all of the Proposers (anonymously) by 5 p.m. (local time), March 21, 2014. All questions and associated correspondences should be submitted to:

- Tammi Reinhart, City of Reading (tammi.reinhart@readingpa.org)

After the Proposal has been submitted to the City, communications related to this RFP, the Proposal or the Project initiated by a Proposer to the City shall be prohibited until a Contract has been executed by the City. Any communication between a Proposer and the City shall only be initiated by the appropriate City employee or agent in order to obtain information or clarification needed to develop a proper, accurate evaluation of the Proposal.

Any prohibited communications initiated by a Proposer may be grounds for disqualifying the offending Proposer from consideration for award of the Proposal and/or any future proposal.

### ***C. CONFIDENTIALITY OF THE PROPOSAL***

Under Pennsylvania's "Right to Know" law, public records are required to be open for reasonable inspection. All Proposal information, including detailed price and cost information, will be held in confidence while the City is evaluating the Proposals. After the City and Selected Engineer have executed the Contract, all Proposals will become public records. Copies of said public records may be requested through the City's Chief Clerk's office.

Trade secrets and other confidential proprietary data contained in the Proposal may be held confidential if the Proposer requests in writing that the City does so and the City agrees in writing to do so. Material considered trade secrets or confidential proprietary data by the Proposer must be clearly identified and the Proposer must include a brief statement that sets out the reasons for requesting the confidentiality of each such material. Blanket statements that entire Proposal is confidential shall be unacceptable.

The Proposal will become the exclusive property of the City and will not be returned.

***D. EVALUATION OF PROPOSALS***

The award of the services associated with this RFP may or may not be made to the Proposer submitting the lowest price Cost Proposal. The award will be made to the Proposer whose Proposal is determined to be the most advantageous to the City, taking into consideration, without limitation the evaluation factors set forth below:

1. Experience, qualifications, and commitment of the Engineering Team
  - a. The degree to which the personnel on the Engineering Team have held responsible project positions for similar projects;
  - b. The degree to which the Engineering Team brings experience in the full range of skills and expertise needed to accomplish the scope of work in all task areas;
  - c. The specific commitments made in the Proposal for staffing the Engineering Team, including percent of Project Manager's time dedicated to the Project;
  - d. Experience within the local permitting region; and
  - e. Any other experience and/or criteria the committee deems relevant.
2. Experience and past performance of the Proposer and Engineering Team members on similar projects within the last seven years:
  - a. The experience of the Proposer and Engineering Team members in conducting projects of similar nature and complexity;
  - b. The ability of the Proposer to draw on this experience to benefit the Project; and
  - c. Any other experience and/or criteria the City deems relevant.
3. Method of accomplishing the scope of work
  - a. Proposed organization of the work;
  - b. Unique capabilities that may influence the Project;
  - c. Understanding of the appropriate levels of effort required (hours) for various tasks;
  - d. Identification of Project risks and methods to mitigate or eliminate such risks to complete the Project within the proposed schedule, estimated budget and with the quality and/or performance specifications identified herein;
  - e. Appropriate Project financial and management controls including, but not limited to,
    - i. Clear method and effort level of meeting and tracking progress of schedule milestones, intended outcomes and deliverables for each task
    - ii. Quality assurance
    - iii. Project financial controls and invoicing systems
4. Any other experience and/or criteria the City deems relevant.

#### ***E. PROPOSAL SUBMISSION***

Submit seven (7) copies of the Technical Proposal in a sealed envelope and seven (7) copies of the Cost Proposal in a separate sealed envelope. The Proposal envelopes shall be clearly labeled as “Technical Proposal for RFP # 2014-6 Sixth and Canal Pump Station Short-Term Improvements Project” and “Cost Proposal for for RFP # 2014-6 Sixth and Canal Pump Station Short-Term Improvements Project”, respectively.

The Proposal shall be delivered to the City Purchasing Coordinator, Room 2-45, City Hall, 815 Washington Street, Reading, PA, no later than **2:00 p.m. (local time), March 26, 2014** (the “Proposal Opening”). Proposals received at the Office of the Purchasing Coordinator after the time specified will not be considered by the City.

#### ***F. WITHDRAWAL OF PROPOSALS***

Proposals may not be modified after submittal. Proposals may be withdrawn after submittal, provided the Proposer makes its request to withdraw in writing and the request is received and acknowledged by the City in writing prior to the time specified for the Proposal Opening.

Negligence by Proposer in preparing its Proposal confers no right of withdrawal or modification of its Proposal after such Proposal has been opened. No claims on account of mistakes or omissions in any Proposal will be considered. Proposals are deemed a firm offer and each Proposer agrees that its Proposal shall not be withdrawn within one hundred twenty (120) days from the Proposal Opening.

#### ***G. PROCEDURE FOR REVIEW OF PROPOSALS***

The City shall conduct a preliminary evaluation of all Proposals based on the information provided. The City will first review each Technical Proposal for compliance with the minimum qualifications and mandatory requirements of the RFP. Failure to comply with any mandatory requirements may disqualify a Proposal.

Upon completing its technical review, the City will evaluate and score each of the Technical Proposals. The City will then open each of the Cost Proposals and complete a similar review, evaluation, and scoring.

The City may arrange for meetings or interviews with one or more of the Proposers to clarify any aspect of its Proposal and to give a Proposer the opportunity to explain its credentials. The City has the responsibility to negotiate the most favorable cost, terms and conditions for the City. The negotiating process may involve one or more Proposers, and may continue until the Contract is executed by the Selected Engineer. The City will contact the Proposers selected for an interview with the date and time for their respective interviews.



## ***H. WINNING PROPOSAL***

The City will select a winning Proposal if the City determines that an appropriate, acceptable and complete Proposal is submitted by a responsible Proposer which the City, at its sole and exclusive discretion, determines will provide the best overall value to the City.

## **V. CONTRACT TERMS REQUIRED TO COMPLETE THE PROJECT**

The City will notify the selected Proposer with a “Notice of Award”. The selected Proposer and the City will execute a contract, in a form substantially similar to the proposed contract attached to this RFP as Attachment 5, for the completion of the services identified in this RFP (the “Contract”) within seven (7) calendar days after the City’s transmittal of the Notice of Award. If the selected Proposer does not accept the Contract presented by the City within such time, the City may, in its sole discretion, withdraw the Notice of Award. Subject to the City’s reservation of rights below, the City may select another Proposer to award the Contract or withdraw the RFP.

The Contract, when executed, shall be deemed to be the entire agreement between the parties; the Selected Engineer shall not base any claim for modification of the Contract upon any prior representation or promise made by the representatives of the City, or other persons. This RFP will be attached as an exhibit to the Contract.

The following terms and conditions shall apply to the Contract:

### ***A. INDEPENDENT CONTRACTOR AND INSURANCE***

The Selected Engineer shall be an independent contractor. The Selected Engineer shall properly safeguard against any and all injury or damage to the public, to public and private property, materials and things. The Selected Engineer shall be responsible for any and all damage, loss or injury to persons or property that may arise, or be incurred, in or during its performance of the Project.

The Selected Engineer shall maintain such insurance as will protect it from claims under worker’s compensation acts and from claims for damages because of bodily injury, including death, and property damage, which may arise from and during operations under the Contract, whether such operations be by itself, by any Subcontractor or anyone directly, or indirectly employed by either of them.

The minimum amount of liability insurance to be maintained by the Selected Engineer and Subcontractors are identified in the Contract:

***B. EQUAL EMPLOYMENT OPPORTUNITY***

During the performance of the Contract, the Selected Engineer agrees as follows:

The Selected Engineer will not discriminate against any employees or applicant for employment because of race, color, religion, sex, or national origin. The Selected Engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Selected Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The City may elect to provide the Selected Engineer with the required form notice.

The Selected Engineer will, in all solicitations or advertisements for employees placed by or on behalf of the Selected Engineer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

In the event of the Selected Engineer's noncompliance with the non-discrimination clauses above or with any applicable laws, the Contract may be canceled, terminated, or suspended in whole, or in part and the Selected Engineer may be declared ineligible for further City contracts.

The Selected Engineer shall include the paragraphs set forth in this section in every subcontract or purchase order unless exempted.

***C. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED***

No person who, at the time, is serving sentence in a penal or correctional institution shall be employed on the work covered by the Contract.

***D. ALTERATIONS OR MODIFICATIONS***

The Contract will be under the direct supervision of the City, its authorized representatives or its agents. Any alterations or modifications of the work performed under the Contract shall be made only by written agreement between the Selected Engineer and the City's authorized representative and shall be made prior to commencement of the altered or modified work. No claims for extra work or materials shall be allowed unless covered by a written agreement and signed by the City's Managing Director.

***E. SUBCONTRACTS***

The Selected Engineer will not be allowed to subcontract work under the Contract unless prior written approval of each Subcontractor is granted by the City in its sole discretion. The Subcontractors shall be bound by the conditions of the Contract and shall execute and deliver to

the City a Political Contribution Affidavit and Non Discrimination Statement prior to performing any services under the Contract. All required notices, work orders, directives and requests for emergency services will be directed to the Selected Engineer. All directions given to a Subcontractor in the field shall bind the Selected Engineer as if the notice had been given directly to the Selected Engineer.

#### ***F. RIGHT TO AUDIT RECORDS***

The City shall be entitled to audit the books and records of the Selected Engineer or any of its Subcontractors to the extent that such books and records relate to the Contract or its performance of the Project. Such books and records shall be maintained by the Selected Engineer and its Subcontractors for a period of three (3) years from the date of final payment under the Contract unless a shorter period is otherwise authorized in writing.

#### ***G. DISSEMINATION OF INFORMATION***

During the term of the Contract, the Selected Engineer may not release any information related to the services or performance of services under the Contract, nor publish any report or documents relating to the City, the account or performance of services under the Contract without prior written consent of the City. The Selected Engineer shall indemnify and hold harmless the City, its officers, agents, and employees from all liability or damages which may be incurred by reason of the Selected Engineer's unapproved dissemination, publication and distribution, or circulation, in any manner whatsoever, of any information, data, documents, or material pertaining to the City, the account or the Contract by the Selected Engineer or its agents or employees.

#### ***H. BUSINESS PRIVILEGE LICENSE AND TAX***

The City of Reading imposes a Business Privilege License, at \$55.00 per calendar year. In addition, a Business Privilege Tax is imposed at the rate of 2 ¼ mills upon the gross receipts attributable to business conducted within the City of Reading.

#### ***I. PERMITS / LICENSES***

The Selected Engineer shall pay all fees and procure all licenses and permits necessary to complete the Project after first obtaining the written approval of the City. The Selected Engineer may invoice the City for the actual fees paid to the applicable regulatory agency to procure such licenses and permits. The Selected Engineer shall give any and all necessary formal notices required in conjunction with the lawful prosecution of the work of the Contract.

#### ***J. OBSERVANCE OF LAWS, ORDINANCES AND REGULATIONS***

The Selected Engineer shall comply with all applicable Federal, State, and Local laws, ordinances, decrees, orders, published governmental guidance documents, and industrial statutes, regulations, codes and standards.

## **VI. RESERVATION OF RIGHTS**

All Proposals and any subsequent submissions required to supplement the Proposal shall be prepared by the Proposer at the Proposer's sole cost and expense. If for any reason whatsoever, the Owner rejects a Proposer's Proposal, the Proposer agrees that it will not seek to recover profits on Work not performed nor will it seek to recover its Proposal preparation costs or claims for unjust enrichment.

The City reserves and may, at its sole discretion, exercise the following rights with respect to this RFP and all Proposals submitted pursuant to this RFP:

- a. To reject all Proposals and re-issue the RFP at any time prior to execution of a final Contract; to require, in any RFP for similar products and/or services that may be issued subsequent to this RFP, terms and conditions that are substantially different from the terms and conditions set forth in this RFP; or to cancel this RFP with or without issuing another RFP.
- b. To reject any Proposal if, in the City's sole discretion, the Proposal is incomplete, the Proposal is not responsive to the requirements of this RFP, the Proposer does not meet the qualification requirements set forth herein, or it is otherwise in the best interest of the City to reject the Proposal.
- c. To supplement, amend, substitute, or otherwise modify this RFP at any time prior to the execution of a final contract.
- d. To accept or reject any or all of the items in any Proposal and award a contract for the whole or only a part of any Proposal if the City determines, in its sole discretion, that it is in the City's best interest to do so.
- e. To reject the Proposal of any Proposer that, in the City's sole judgment, has been delinquent or unfaithful in the performance of any contract with the City, is financially or technically incapable, or is otherwise not responsible.
- f. To waive any informality, defect, non-responsiveness, and/or deviation from this RFP that is not, in the City's sole judgment, material to the Proposal.
- g. To permit or reject, at the City's sole discretion, amendments (including information inadvertently omitted), modifications, alterations, and/or corrections to Proposals by one or more of the Proposers following Proposal submission.
- h. To request that any Proposer modify its Proposal, including, but not limited to, modifying the pricing or providing additional information.
- i. To request additional or clarifying information from any Proposer at any time, including information inadvertently omitted by a Proposer.
- j. To require that the Proposer appear for interviews and/or presentations of its Proposals at City offices.
- k. To inspect projects similar in type and scope to the work sought in this RFP.

1. To conduct such investigations as the City considers appropriate with respect to the qualifications of any Proposer and with respect to the information contained in any Proposal.

## ATTACHMENT 1 TO THE RFP: THE PROPOSED PROJECT SCHEDULE

Task	Calendar Days from Issuance of NTP
Notice to Proceed Issued by the City	1
Completion of the Study Phase concurrently with the Preliminary Design Phase	150
Completion of the Final Design Phase (bid reading documents)	270
Completion of the Bidding Phase	360
Completion of the Construction Phase	690

## ATTACHMENT 2 TO THE RFP: THE COST PROPOSAL FORM

Task	Not to Exceed Fee	Alternate Not to Exceed Fee if City retains a separate Program Manager in accordance with Attachment 4
Study Phase		
Preliminary Design Phase		
Final Design Phase		
Bidding Phase		
Construction Phase		
Post-Construction Phase		
Overall Project Not-to-Exceed Fee		

For administration purposes, the Proposer shall include the estimated/allocated cost of Services necessary to complete the following subtasks. It is understood that the following list is not a comprehensive list of all Services and upgrades required to be performed by the Selected Engineer and, therefore, should not add up to the total overall Project Not-to-Exceed Fee.

Subtask	Estimated/Allocated Value
Geotechnical borings	
Site investigations	
Structural analysis	
Code review	
Influent screening replacement	
Pista grit system	
Relocation of SCADA	
SCADA upgrades	
HVAC Design	
Aboveground oil tank	
Retaining walling	
Drainage system and site piping	
Permitting Services	

[illegible]

### Scope of Reimbursable Expenses\*

Overnight Accommodations: Reimbursable at cost when out-of-state travel is required by the Owner in writing



\* Attach a separate sheet to include additional third party expenses to the scope of Reimbursable Expenses, if desired

Contact information for whom notices required by the Contract shall be sent:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

# ATTACHMENT 3 TO THE RFP: PROPOSAL FORMS

NON-COLLUSION AFFIDAVIT  
INSTRUCTIONS FOR NON-COLLUSION AFFIDAVIT

1. This Non-Collusion Affidavit is material to any contract pursuant to a proposal. According to the Pennsylvania Antirigging Act, 62 Pa. C.S.A. § 4501, et seq., governmental agencies may require Non-Collusion Affidavits to be submitted together with proposals, such as the Proposal submitted by the Proposer.
2. This Non-Collusion Affidavit must be executed by the member officer, or employee of the Proposer who is authorized to legally bind the Proposer.
3. Proposal rigging and other efforts to restrain competition, and the making of false sworn statements in connection with the submission of bids are unlawful and may be subject to criminal prosecution. The person who signs the Affidavit should carefully examine it before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the Proposer with responsibilities for the preparation, approval or submission of the Proposal.
4. If the Proposal is submitted by a joint venture, each party to the venture must be identified in the Proposal documents, and a Non-Collusion Affidavit must be submitted separately on behalf of each party.
5. The term “complementary proposal” as used in the Non-Collusion Affidavit has the meaning commonly associated with that term in the RFP process, and includes the knowing submission of a proposal higher than the proposal of another firm, any intentionally high or noncompetitive proposal, and any form of proposal submitted for the purpose of giving a false appearance of competition.
6. Failure to file a Non-Collusion Affidavit in compliance with these instructions will result in disqualification of the Proposal.

NON-COLLUSION AFFIDAVIT

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_, being first duly sworn, deposes and says that:

(1) He/She is \_\_\_\_\_  
(Owner, Partner, Officer, Representative or Agent of Proposer)

of \_\_\_\_\_, the Proposer that  
(Name of the Proposer)  
has submitted the attached Proposal;

(2) He/She is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;

(3) Such Proposal is genuine and is not a collusive or sham Proposal;

(4) Neither the said Proposer nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Proposer, firm or person to submit a collusive or sham proposal or complementary proposal in connection with the Contract for which the attached Proposal is submitted or to refrain from submitting in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication of conference with any other Proposer, firm or person to fix the price or prices in the attached Proposal or of any other Proposer, or to fix any overhead, profit or cost element of the prices in the Proposal or the price of any other Proposer, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Reading or any person interested in the proposed Contract;

(5) The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affiant; and,

(6) Neither the said Proposer nor any of its officers, partners, owners, agents or parties in interest, have any interest, present or prospective, that can be reasonably construed to result in a conflict of interest between them and the City of Reading, which the Proposer will be required to perform.

I state that \_\_\_\_\_ understands  
(Name of Proposer)

and acknowledges that the above representations are material and important, and will be relied on by the City of Reading in awarding the Contract(s) for which the Proposal is submitted. I understand and the Proposer understands that any misstatement in this Non-Collusion Affidavit is and shall be treated as fraudulent concealment from the City of Reading of the true facts relating to the submission of proposals for this Contract.

Name: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signatory

Title: \_\_\_\_\_  
President or Vice President

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

POLITICAL CONTRIBUTION AFFIDAVIT  
INSTRUCTIONS FOR POLITICAL CONTRIBUTION AFFIDAVIT

1. This Political Contribution Affidavit is material to any contract pursuant to all proposals. Chapter 5, Exhibit A, Section 8 of the City of Reading's Codified Ordinance places limitations and restrictions on the City's purchase of services from a professional business entity, as defined therein, under certain circumstances related to political contributions.
2. This Political Contribution Affidavit must be executed by the member officer, or employee of the Proposer who is authorized to legally bind the Proposer. In addition, this Political Contribution Affidavit must be signed by any Subcontractor the Proposer identifies in the Proposal. To the extent a Subcontractor is identified by the Selected Engineer after submission of the Proposal, said Subcontractor shall sign this Political Contribution Affidavit prior to performing any services on behalf of the City.
3. If the Proposal is submitted by a joint venture, each party to the venture must be identified in the Proposal documents, and a Political Contribution Affidavit must be submitted separately on behalf of each party.
4. Failure to file a Political Contribution Affidavit in compliance with these instructions will result in disqualification of the Proposal.

POLITICAL CONTRIBUTION AFFIDAVIT

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_, being first duly sworn, deposes and says that:

(1) He/She is \_\_\_\_\_  
(Owner, Partner, Officer, Representative or Agent)

of \_\_\_\_\_ (the "Proposer"),  
(Name of the Proposer)

the Proposer that proposes to perform services to the City of Reading;

(2) The Proposer hereby certifies, swears and represents to the City of Reading under penalty of perjury that it has not made a contribution in violation of Chapter 5, Exhibit A, Section 8 of the City of Reading's Codified Ordinance.

(3) The Proposer certifies, swears and represents that it has not knowingly made a contribution in violation of Chapter 5, Exhibit A, Section 8 of the City of Reading's Codified Ordinance and has not made or solicited contributions through intermediaries, third parties, immediate relatives, or PACs for the purpose of concealing the source of the contribution.

(4) Without limiting the generality of the foregoing, the Proposer certifies, swears and represents that neither the said Proposer, nor any of its principals who own 10% or more of the equity in the Proposer, officers of the Proposer in the aggregate or subsidiaries directly controlled by the Proposer made any contribution of money or pledge of a contribution, including in-kind contributions to (i) any campaign committee of any candidate for elective City office or to the current holders of any elective City office, or (ii) to any City of Reading party committee, or (iii) to any municipal party committee within the City of Reading, or (iv) to any candidate committee, state, or county political party or any Political Action Committee ("PAC") that is engaged in the financial or in kind support of candidates for elective City of Reading offices, City elections and/or City of Reading political parties in excess of the maximum thresholds specified below within one calendar year immediately preceding the date of the Proposal. Proposer, its principals, officers or subsidiaries may annually contribute a maximum of \$300 each or up to the amount of reportable contributions as may from time to time be established by State or Federal Law for any purpose to any candidate for elective City office or current office holder, or \$500 to any City of Reading party committee, or municipal party committee within the City of Reading, or to a single or joint campaign account of a candidate committee, state or county political party or PAC. Any group of individuals, including principals, partners, and officers of the Proposer in the aggregate, may annually contribute a maximum of \$2,500 to all candidates for elective City offices and to

officeholders with ultimate responsibility for the award of the contract, and all City and state political parties, municipal party committees within the City of Reading and PACs.

I state that \_\_\_\_\_ understands  
(Name of Proposer)

and acknowledges that the above representations are material and important, and will be relied on by the City of Reading in awarding the Contract(s) for which the Proposal was submitted. I understand and my firm understands that any misstatement in this Affidavit is and shall be treated as fraudulent concealment from the City of Reading and subject to penalty of perjury.

Name: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signatory

Title: \_\_\_\_\_  
President or Vice President

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



## PROPOSER'S STATEMENT FOR PUBLIC DISCLOSURE

If space on this form is inadequate for any requested information, this should be furnished on an attached page which refers to the appropriate numbered item on this Proposer's Statement for Public Disclosure.

1. a. Name of Proposer:

b. Address and Zip Code of Proposer:

2. If the Proposer is not an individual doing business under his own name, the Proposer has the status indicated below:

\_\_\_\_\_ a corporation organized under the laws of \_\_\_\_\_

\_\_\_\_\_ a limited liability company organized under the laws of \_\_\_\_\_

\_\_\_\_\_ a partnership organized under the laws of \_\_\_\_\_

\_\_\_\_\_ a business association or a joint venture organized under the laws of \_\_\_\_\_

\_\_\_\_\_ a Federal, State or Local government or instrumentality thereof

\_\_\_\_\_ other (explain) and identify the state of organization

3. If the Proposer is not an individual or a government agency or instrumentality, give date of organization: \_\_\_\_\_

4. Names, addresses, title of position (if any), and nature and extent of the interest of the officers and principal members, shareholders, investors other than a government agency or instrumentality, are set forth as follows:

a. If the Proposer is a corporation, the officers, directors, trustees, and each stockholder owning more than 10% of any share of stock.

b. If the Proposer is a partnership, each partner, whether a general or limited partner, and either the percent of interest or a description of the character and extent of interest.

c. If the Proposer is a business association or a joint venture, each participant and either the percent of interest or a description of the character and extent of interest.

d. If the Proposer is some other entity, the officers, the members of the governing body, and each person having an interest of more than 10%.

NAME, ADDRESS & ZIP CODE	POSITION TITLE (if any) AND PERCENT OF INTEREST OR DESCRIPTION OF CHARACTER AND EXTENT OF INTEREST

5. Name, address and nature and extent of interest of each person or entity (not named in response to Item 4) who has a beneficial interest in any of the shareholders or investors named in response to Item 5 which gives such person or entity more than a computed 10% interest in the Proposer (for example, more than 20% of the stock in a corporation which holds 50% of the stock of the Proposer, or more than 50% of the stock in a corporation which holds 20% of the stock of the Proposer).

NAME, ADDRESS & ZIP CODE	DESCRIPTION OF CHARACTER AND EXTENT OF INTEREST

6. Names (if not given above) of officers and directors or trustees of any corporation or firm listed under Item 4 or Item 5 above:

7. Is the Proposer a subsidiary of or affiliated with any other corporation or any other firm or firms?

\_\_\_ YES \_\_\_ NO. If yes, list each such corporation or firm by name and address, specify its relationship to the Proposer, and identify the officers and directors or trustees common to the Proposer and such other corporation or firm:

Subsidiary or Affiliated Entity Name	Address	Relationship to Proposer	Common Officers, Directors or Trustees

8. List the federal grant projects under Title I of the Housing and Community Development Act of 1974 (CP.L.93-383), as amended, in which the Proposer or any of the principals of the Proposer is or has been the contractor, or a stock-holder, officer, director or trustee, or partner of such a contractor:

9. If the Proposer or a parent corporation, a subsidiary, an affiliate or a principal of the Proposer is to participate in the Project as a Subcontractor:

a. Name and address of such Subcontractor:

Name of Subcontractor	Address

b. Has such Subcontractor within the last 10 years ever failed to qualify as a responsible bidder or proposer, refused to enter into a contract after an award has been made, or failed to complete a contract?

\_\_\_ YES \_\_\_ NO. If yes, explain:

c. Outstanding contract bids of such Subcontractor:

Awarding Agency	Amount	Date Opened
	\$	
	\$	

10. Brief statement respecting equipment, experience, financial capacity, and other resources available to such Subcontractor for the performance of the work or services involved in the contract, specifying particularly the qualifications of the personnel, the nature of the equipment, and the general experience of the Subcontractor.

11. a. Does any member of the governing body or employee of the Local Public Agency or any officer or employee of the Local Public Agency who exercises any functions or responsibilities in connection with the awarding and/or carrying out of the contract have any direct or indirect personal interest in the Proposer or in the Proposer's performance under the contract?  
\_\_\_ YES \_\_\_ NO. If yes, explain:

---

---

---

b. Does any member of the governing body of the locality in which the Public Improvement Project is situated or any other public official of the locality, who exercises any functions or responsibilities in the review or approval of the awarding and/or carrying out of the contract have any direct or indirect personal interest in the Proposer or in the Proposer's performance under the contract? \_\_\_YES \_\_\_NO. If yes, explain:

---

---

---

**CERTIFICATION**

I (We) \_\_\_\_\_ certify that this Proposer's Statement for Public Disclosure is true, accurate and complete to the best of my (our) knowledge and belief(s) after reasonable inquiry.

DATED:

DATED:

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(ADDRESS & ZIP CODE)

\_\_\_\_\_  
(ADDRESS & ZIP CODE)

1 - If the Proposer is an individual, this Proposer's Statement for Public Disclosure should be signed by such individual; if a partnership, by one of the partners; if a corporation or other entity, by one of its chief officers having knowledge of the facts required by this Statement.

2 - Penalty For False Certification: It is unlawful to knowingly and willfully making or using any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry in a matter to a public servant under Section 1001, Title 18, of the U.S.C. and Section 4904, Title 18 of the Pennsylvania Consolidated Statutes. Penalties may include a fine of not more than \$10,000, imprisonment of not more than five years, or both.

## CERTIFICATION OF NON-INDEBTEDNESS TO THE CITY OF READING

Proposer hereby certifies and represents that Proposer and Proposer's parent company(ies) and subsidiary(ies) are not currently indebted to the City of Reading (the "City"), and will not at any time during the term of this Contract (including any extensions or renewals thereof) be indebted to the City, for or on account of any delinquent taxes, liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the City at law or in equity, Proposer acknowledges that any breach or failure to conform to this certification may, at the option of the City, result in the withholding of payments otherwise due to Proposer and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments and/or the termination of this Contract for default (in which case Proposer shall be liable for all excess costs and other damages resulting from the termination).

Proposer: \_\_\_\_\_

Name: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signatory

Title: \_\_\_\_\_  
President or Vice President

Attest: \_\_\_\_\_

## NON DISCRIMINATION STATEMENT

The undersigned hereby certifies that it shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap, familial status, or national origin. The undersigned shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, handicap, familial status, or national origin.

Name: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_



## Attachment 4: Alternate Proposal

### Scope of Program Manager's Services

The City is considering retaining a separate Program Manager to act as the City's representative through the course of the Project. In particular, the Program Manager will assist the City in reviewing and commenting on the Design Documents prepared by the Selected Engineer during the Preliminary and Final Design Phases and provide a constant on-site presence to oversee and coordinate the Contractors during the Construction Phase.

If the City were to retain a separate Program Manager, the following Exhibit would be appended to the Selected Engineer's Contract in order to ensure coordination between the professionals. The City requests that each Proposer identify in the Cost Proposal separate fees for each Phase if the City were to retain a Program Manager for the Project.

This is **EXHIBIT N**, consisting of \_\_\_ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated \_\_\_\_\_, 2014.

#### **Duties, Responsibilities and Limitations on Authority of Program Manager and Engineer**

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

##### *N1.01 Owner's Representatives.*

- A. Program Manager and Engineer will be Owner's consultants during the construction period. The duties, responsibilities and limitations of authority of Program Manager and Engineer as Owner's consultants during construction are set forth in the Contract Documents.

##### *N1.02 Administration of the Contract.*

- A. The Program Manager and Engineer will provide administration of the Contract as described in the Contract Documents and will be Owner's consultants during construction until the date Engineer issues the final Certificate for Payment. The Program Manager and Engineer will have authority to act on behalf of Owner only to the extent provided in the Contract Documents.
- B. Engineer will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Laws and Regulations, WWTP permit

requirements and the Contract Documents. However, Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, Engineer will keep Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to Owner and Program Manager (1) known deviations from the Contract Documents and from the most recent Project schedule prepared by the Program Manager, and (2) defects and deficiencies observed in the Work.

- C. The Program Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Site whenever the Work is being performed or shall otherwise be available upon request. The Program Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep Owner reasonably informed of the progress of the Work, and will report to Owner and Engineer (1) known deviations from the Contract Documents and the most recent Progress Schedule, and (2) defects and deficiencies observed in the Work.
- D. The Program Manager will coordinate the activities of Contractor and other contractors in accordance with the latest approved Progress Schedule.
- E. The Program Manager, except as specifically set forth herein, and Engineer will not have control over, or charge of, construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely Contractor's rights and responsibilities under the Contract Documents, and neither will be responsible for Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Program Manager nor Engineer will have control over or charge of or be responsible for acts or omissions of Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

#### N1.03 *Communications Facilitating Contract Administration.*

- A. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, Owner and Contractor shall endeavor to communicate with each other directly or through the Program Manager, and shall contemporaneously provide the same communications to Engineer about matters arising out of or relating to the Contract Documents. Communications by and with Engineer's consultants shall be through Engineer. Communications by and with Subcontractors and material suppliers shall be through Contractor. Communications by and with Owner's own forces shall be through Owner.
- B. The Program Manager and Engineer will review all Applications for Payment by Contractor.
- C. Engineer, after consultation with the Program Manager, will have the authority to reject Work that does not conform to the Contract Documents and will notify each

other about the rejection. However, neither Engineer's nor the Program Manager's authority to act nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of Engineer or the Program Manager to Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing any of the Work.

- D. Engineer will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from Contractor such as Shop Drawings, Product Data and Samples. Where there are other contractors, the Program Manager will coordinate the information contained within each submittal received from Contractor and other contractors, and transmit to Engineer those recommended for approval. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to Program Manager and Engineer that the Contractor has reviewed and recommended them for approval. The Contractor's actions will be taken in accordance with the Schedule of Submittals approved by Engineer or, in the absence of an approved Schedule of Submittals, with reasonable promptness while allowing sufficient time to permit adequate review by Engineer.
- E. Engineer will review and take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Engineer's action will be taken in accordance with the Schedule of Submittals approved by Engineer or, in the absence of an approved Schedule of Submittals, with reasonable promptness while allowing sufficient time in Engineer's professional judgment to permit adequate review. Upon Engineer's completed review, Engineer shall transmit its submittal review to the Program Manager.
- F. Review of Contractor's submittals by the Program Manager and Engineer is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of Contractor. The Program Manager's and Engineer's review of Contractor's submittals shall not relieve Contractor of its obligations under the Contract Documents. The Program Manager's and Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Program Manager and Engineer, of any construction means, methods, techniques, sequences or procedures. Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- G. Engineer will prepare Change Orders and Work Change Directives.
- H. The Program Manager and Engineer will take appropriate action on Change Orders or Work Change Directives in accordance with the Contract Documents and

Engineer will have authority to order minor changes in the Work. Engineer, in consultation with the Program Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions.

- I. The Program Manager will assist Engineer in conducting inspections to determine the dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with Engineer; and receive and forward to Owner written warranties and related documents required by the Contract and assembled by Contractor.
- J. Engineer will interpret and decide matters concerning performance under, and requirements of the Contract Documents on written request of the Program Manager, Owner or Contractor through the Program Manager. Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- K. Interpretations and decisions of Engineer will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, Engineer will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.
- L. Engineer's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.
- M. The Program Manager will receive and review requests for information from Contractor, and forward each request for information to Engineer, with the Program Manager's recommendation. Engineer will review and respond in writing to the Program Manager to requests for information about the Contract Documents. The Program Manager's recommendation and Engineer's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, Engineer will prepare and issue supplemental Drawings and Specifications in response to the requests for information. In the event Engineer determines that Contractor submits an excessive and/or unreasonable request for information, Owner agrees to notify the Contractor and facilitate the Contractor's payment of Engineer's fees incurred in connection with responding to such excess and/or unreasonable requests for information in compliance with the Contract Documents

## Attachment 5 to the RFP: The Proposed Contract

**Engineers Joint Documents Committee  
Design and Construction Related Documents  
Instructions and License Agreement**

**Instructions**

**Before you use any EJCDC document:**

1. Read the License Agreement. You agree to it and are bound by its terms when you use the EJCDC document.
2. Make sure that you have the correct version for your word processing software.

**How to Use:**

1. While EJCDC has expended considerable effort to make the software translations exact, it can be that a few document controls (e.g., bold, underline) did not carry over.
2. Similarly, your software may change the font specification if the font is not available in your system. It will choose a font that is close in appearance. In this event, the pagination may not match the control set.
3. If you modify the document, you must follow the instructions in the License Agreement about notification.
4. Also note the instruction in the License Agreement about the EJCDC copyright.

**License Agreement**

**You should carefully read the following terms and conditions before using this document. Commencement of use of this document indicates your acceptance of these terms and conditions. If you do not agree to them, you should promptly return the materials to the vendor, and your money will be refunded.**

The Engineers Joint Contract Documents Committee ("EJCDC") provides **EJCDC Design and Construction Related Documents** and licenses their use worldwide. You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from **EJCDC Design and Construction Related Documents**.

You acknowledge that you understand that the text of the contract documents of **EJCDC Design and Construction Related Documents** has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You further acknowledge that EJCDC documents are protected by the copyright laws of the United States.

**License:**

You have a limited nonexclusive license to:

1. Use **EJCDC Design and Construction Related Documents** on any number of machines owned, leased or rented by your company or organization.
2. Use **EJCDC Design and Construction Related Documents** in printed form for bona fide contract documents.
3. Copy **EJCDC Design and Construction Related Documents** into any machine readable or printed form for backup or modification purposes in support of your use of **EJCDC Design and Construction Related Documents**.

**You agree that you will:**

1. Reproduce and include EJCDC's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program. All proprietary rights in **EJCDC Design and Construction Related Documents** are and shall remain the property of EJCDC.
2. Not represent that any of the contract documents you generate from **EJCDC Design and Construction Related Documents** are EJCDC documents unless (i) the document text is used without alteration or (ii) all additions and changes to, and deletions from, the text are clearly shown.

**You may not use, copy, modify, or transfer EJCDC Design and Construction Related Documents, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of EJCDC Design and Construction Related Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited.**

**If you transfer possession of any copy, modification or merged portion of EJCDC Design and Construction Related Documents to another party, your license is automatically terminated.**

**Term:**

The license is effective until terminated. You may terminate it at any time by destroying **EJCDC Design and Construction Related Documents** altogether with all copies, modifications and merged portions in any form. It will also terminate upon conditions set forth elsewhere in this Agreement or if you fail to comply with any term or condition of this Agreement. You agree upon such termination to destroy **EJCDC Design and Construction Related Documents** along with all copies, modifications and merged portions in any form.

**Limited Warranty:**

EJCDC warrants the CDs and diskettes on which **EJCDC Design and Construction Related Documents** is furnished to be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of delivery to you as evidenced by a copy of your receipt.

**There is no other warranty of any kind, either expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state.**

EJCDC does not warrant that the functions contained in **EJCDC Design and Construction Related Documents** will meet your requirements or that the operation of **EJCDC Design and Construction Related Documents** will be uninterrupted or error free.

**Limitations of Remedies:**

EJCDC's entire liability and your exclusive remedy shall be:

1. the replacement of any document not meeting EJCDC's "Limited Warranty" which is returned to EJCDC's selling agent with a copy of your receipt, or
2. if EJCDC's selling agent is unable to deliver a replacement CD or diskette which is free of defects in materials and workmanship, you may terminate this Agreement by returning EJCDC Document and your money will be refunded.

In no event will EJCDC be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use **EJCDC Design and Construction Related Documents** even if EJCDC has been advised of the possibility of such damages, or for any claim by any other party.

Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.

**General:**

You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement. Any attempt otherwise to sublicense, assign, or transfer any of the rights, duties, or obligations hereunder is void.

This Agreement shall be governed by the laws of the State of Virginia. Should you have any questions concerning this Agreement, you may contact EJCDC by writing to:

Arthur Schwartz, Esq.  
General Counsel  
National Society of Professional Engineers  
1420 King Street  
Alexandria, VA 22314

Phone: (703) 684-2845  
Fax: (703) 836-4875  
e-mail: [aschwartz@nspe.org](mailto:aschwartz@nspe.org)

**You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the agreement between us which supersedes any proposal or prior agreement, oral or written, and any other communications between us relating to the subject matter of this agreement.**

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Laws and Regulations.

# AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**



ENGINEERS JOINT CONTRACT  
DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE

*A Practice Division of the*

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS



This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC User's Guide to the Owner-Engineer Agreement, EJCDC E-001, 2009 Edition.

Copyright © 2008 National Society of Professional Engineers  
1420 King Street, Alexandria, VA 22314-2794  
(703) 684-2882  
[www.nspe.org](http://www.nspe.org)

American Council of Engineering Companies  
1015 15th Street N.W., Washington, DC 20005  
(202) 347-7474  
[www.acec.org](http://www.acec.org)

American Society of Civil Engineers  
1801 Alexander Bell Drive, Reston, VA 20191-4400  
(800) 548-2723  
[www.asce.org](http://www.asce.org)

Associated General Contractors of America  
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308  
(703) 548-3118  
[www.agc.org](http://www.agc.org)

The copyright for this EJCDC document is owned jointly by the four EJCDC sponsoring organizations and held in trust for their benefit by NSPE.

## TABLE OF CONTENTS

### Page

ARTICLE 1 – SERVICES OF ENGINEER .....	<del>12</del>
1.01 Scope .....	<del>12</del>
ARTICLE 2 – OWNER’S RESPONSIBILITIES .....	<del>12</del>
2.01 General .....	<del>12</del>
ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES .....	2
3.01 Commencement .....	2
3.02 Time for Completion .....	2
ARTICLE 4 – INVOICES AND PAYMENTS .....	<del>23</del>
4.01 Invoices .....	<del>23</del>
4.02 Payments .....	<del>23</del>
ARTICLE 5 – OPINIONS OF COST .....	3
5.01 Opinions of Probable Construction Cost .....	3
5.02 Designing to Construction Cost Limit .....	<del>34</del>
5.03 Opinions of Total Project Costs .....	<del>34</del>
ARTICLE 6 – GENERAL CONSIDERATIONS .....	4
6.01 Standards of Performance .....	4
6.02 Design <del>Without</del> <u>With</u> Construction Phase Services .....	<del>57</del>
6.03 Use of Documents .....	<del>57</del>
6.04 Insurance .....	<del>67</del>
6.05 Suspension and Termination .....	<del>78</del>
6.06 Controlling Law .....	<del>910</del>
6.07 Successors, Assigns, and Beneficiaries .....	<del>910</del>
6.08 Dispute Resolution .....	<del>911</del>
6.09 Environmental Condition of Site .....	<del>1011</del>
6.10 Indemnification and <del>Mutual</del> Waiver .....	<del>1012</del>
6.11 Miscellaneous Provisions .....	<del>1112</del>
ARTICLE 7 – DEFINITIONS .....	<del>1214</del>
7.01 Defined Terms .....	<del>1214</del>
ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS .....	<del>1517</del>
8.01 Exhibits Included .....	<del>1517</del>
8.02 Total Agreement <del>16</del> .....	<del>18</del>
8.03 Designated Representatives <del>16</del> .....	<del>18</del>
8.04 Engineer’s Certifications <del>16</del> .....	<del>18</del>

# AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of \_\_\_\_\_, \_\_\_\_\_ (“Effective Date”) between

City of Reading, Pennsylvania

(“Owner”) and

(“Engineer”).

Owner’s Project, of which Engineer’s services under this Agreement are a part, is generally identified as follows:

~~(“City of Reading Sixth and Canal Pump Station Short-Term Improvements Project”). (“Project”).~~

~~Engineer’s services under this Agreement are generally identified as follows:~~ The Project requirements are set forth in this Agreement, the Owner’s Request for Proposal date                     , 2014 (the “RFP”), and the CIP (as defined below).

The Project involves the planning and designing of improvements to the existing the Sixth and Canal Pump Station (“6<sup>th</sup> Street P.S.”) such that the 6<sup>th</sup> Street P.S. will meet the Owner’s obligations related to the short-term capital improvements set forth in the Capital Improvements Plan submitted by the Owner to the United States Department of Justice and Pennsylvania Department of Environmental Protection on June 18, 2013 (“CIP”), which was made available to Engineer in connection with the RFP in a way that will facilitate flexibility to accommodate additional improvements to meet future permit and regulatory requirements. Engineer’s design shall allow for the existing facilities at the 6<sup>th</sup> Street P.S. to remain in full operation during construction so that the Owner can continuously maintain compliance with its permit requirements.

Owner and Engineer further agree as follows:

## ARTICLE 1 – SERVICES OF ENGINEER

### 1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and ~~in Exhibit A~~ the exhibits attached hereto.

## ARTICLE 2 – OWNER’S RESPONSIBILITIES

### 2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

## ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

### 3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the Effective Date.

### 3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer’s services is impaired, or Engineer’s services are delayed or suspended, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer’s performance of its services.
- E. If Engineer fails, ~~through its own fault~~ as a result of circumstances not wholly outside of Engineer’s control and which were not reasonably foreseeable, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled to all remedies available at law, as its sole remedy including, to without limitation, the recovery of direct-, indirect, consequential, special, and/or liquidated damages, if any, resulting from such failure.

## ARTICLE 4 – INVOICES AND PAYMENTS

### 4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare detailed invoices in accordance with ~~its standard invoicing practices and~~ the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within ~~30-60~~ days of Owner's receipt of an invoice meeting the requirements of Exhibit C.

### 4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within ~~30-60~~ days after receipt of Engineer's invoice (unless such invoice is rejected for reasons set forth in Exhibit C), then:
1. amounts due Engineer will be increased at the rate of ~~1-02.0~~% per ~~month-annum~~ (or the maximum rate of interest permitted by law, if less) from said ~~thirtieth-sixtieth~~ day; and
  2. Engineer may, after giving ~~seven-thirty~~ days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. ~~Owner waives any and all claims against Engineer for any such suspension.~~
- C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges without mark up as a Reimbursable Expense ~~to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be~~ in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

## ARTICLE 5 – OPINIONS OF COST

### 5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction

Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner ~~must~~will employ an independent cost estimator ~~as provided in Exhibit B.~~

#### 5.02 *Designing to Construction Cost Limit*

~~A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement.~~

A. Engineer shall meet with Owner to understand Owner's budgetary limitations for the Project. Engineer shall also review all of Owner's financing and grant agreements associated with the Project.

#### 5.03 *Opinions of Total Project Costs*

A. The services, ~~if any,~~ of Engineer with respect to Total Project Costs shall be ~~in addition to providing the probable Construction Cost,~~ limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs provided such opinions are prepared in accordance with the standard of care set forth in Paragraph 6.01.A.

### ARTICLE 6 – GENERAL CONSIDERATIONS

#### 6.01 *Standards of Performance*

A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances ~~at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.~~

B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information that Engineer reasonably relied upon.

C. *Consultants:* Engineer shall not subcontract work under this Agreement unless prior written approval of each Consultant is granted by Owner in its sole discretion. The Subcontractors shall be bound by the conditions of this Agreement and shall execute and deliver to Owner a Political Contribution Affidavit and Non Discrimination Statement, as included with the RFP, prior to performing any services under this Agreement. All required notices, work orders, directives and requests for emergency services will be directed to Engineer. All directions given to Engineer's Consultant in the field shall bind Engineer as if the notice had been given directly to Engineer. Compensation due for the services of such Consultants shall be in accordance with Exhibit C.

- ~~C. Consultants: Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.~~
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards. Provided, however, information furnished by Engineer's Consultants shall be deemed Engineer's work product.
- E. Compliance with Laws and Regulations, and Policies and Procedures:
1. Engineer and Owner shall comply with applicable Laws and ~~regulations~~Regulations.
  2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to ~~Engineer's~~Engineer's performance of services under this Agreement. provided to Engineer in writing. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
  3. This Agreement is based on Laws and Regulations and Owner~~provided~~'s written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner~~provided~~'s written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
  4. Engineer recognizes that the Project is being performed in connection with Owner's obligations under a Consent Decree entered with the United States District Court for the Eastern District of Pennsylvania, Civil Action No., 04-5696 (November 7, 2005) (the "Consent Decree"). The CIP was submitted by Owner to the United States Department of Justice, United States Environmental Protection Agency and the Pennsylvania Department of Environmental Protection to identify the improvements and completion schedule associated with Owner's capital improvement program required under the Consent Decree. Engineer warrants and agrees that it has sufficient time and resources necessary to perform its services as necessary for Owner to comply with Owner's obligations under the Consent Decree and CIP with respect to the short-term improvements to the 6<sup>th</sup> Street P.S., and Engineer expressly covenants to do so.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in ~~the~~Engineer having to certify, guarantee, or warrant the existence of conditions whose existence ~~the~~Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with ~~the~~Engineer or payment of any amount due to ~~the~~Engineer in any way contingent upon ~~the~~ Engineer signing any such documents.
- G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by ~~the~~Engineers Joint



Contract Documents Committee (EJCDC C-700, 2007 Edition) ~~unless both parties mutually agree to use other general conditions by specific reference in Exhibit J~~ as modified by the Owner's legal counsel.

- H. Engineer shall not at any time supervise, direct, control, or have authority over any ~~contractor work~~ Contractor Work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a ~~contractor~~ Contractor to comply with Laws and Regulations applicable to such ~~contractor's~~ Contractor's furnishing and performing of its ~~work~~ Work.
- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision ~~made regarding the Contract Documents, or any~~ application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.
- L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.
- M. Engineer's Representations and Warranties: Engineer represents and warrants to Owner as follows:
  - 1. Engineer may lawfully conduct its business in the Commonwealth of Pennsylvania with power and authority to enter into this Agreement, to carry on its business and to incur and perform its obligations.
  - 2. The execution and delivery of this Agreement and performance by Engineer of its obligations under this Agreement do not and will not violate any provision of law and will not result in the breach of, or constitute a default under, any agreement to which Engineer is a party or by which it is bound.
  - 3. There is no action, suit or proceeding at law or in equity or by any governmental instrumentality or other agency now pending or, to the knowledge of Engineer, threatened against or affecting Engineer that, if adversely determined, would materially impair Engineer's right to carry on business substantially as now conducted and as contemplated under this Agreement, or to perform its obligations under this Agreement, or would materially adversely affect its financial condition, except those previously disclosed to the Owner in writing.



4. Engineer possesses the necessary license or licenses to perform, in the Commonwealth of Pennsylvania, the services contemplated under this Agreement and if any part of such services is to be subcontracted or subconsulted, its subcontractors and subconsultants have the necessary license or licenses to perform such services.
5. Engineer possesses the expertise, experience, personnel and resources to perform the desired services and all personnel engaged to perform services hereunder shall be fully qualified and authorized or permitted under applicable law and regulations to perform such services. None of the services covered by this Agreement shall be subcontracted without the prior written permission of Owner.

#### 6.02 *Design ~~Without~~ With Construction Phase Services*

- ~~A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, Paragraph A1.05.~~
- A. Engineer shall be responsible for those Construction Phase services of Engineer in Exhibit A and the RFP and as otherwise reasonably inferable therefrom.

#### 6.03 *Use of Documents*

- ~~A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.~~
- A. All documents prepared by Engineer and/or Engineer's Consultants for this Project, including, without limitation, drawings, specifications (including, without limitation, those in electronic form), are the property of Owner who shall be vested with all common law, statutory and other reserved rights. At Owner's request, Engineer and/or Engineer's Consultants shall provide Owner and any third party designated by Owner, a full and complete release in form and substance acceptable to Owner, of any and all rights Engineer and/or Engineer's Consultants may have to all documents prepared by Engineer and/or Engineer's Consultants for this Project. Owner shall provide Engineer and/or Engineer's Consultants with a full and complete release of liability in form and substance acceptable to Engineer, of any and all liability arising from the use of the

drawings, specifications and other documents prepared by Engineer and/or Engineer's Consultants for this Project, in any other project of Owner other than this Project.

- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, ~~are the items that the other party intended to send~~. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. ~~If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.~~
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- ~~E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.~~
- ~~F. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.~~

#### 6.04 Insurance

- A. Engineer and Engineer's Consultants shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on ~~any applicable general liability insurance policy~~ policies (except for workers' compensation) carried by Engineer and Engineer's Consultants.
- B. Owner shall procure and maintain insurance as ~~set forth in Exhibit G, "Insurance."~~ Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies and as loss payees on any property insurance policies carried by Owner which are applicable to the Project deemed appropriate by Owner in its sole discretion.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer ~~and its Consultants~~ to be listed as additional insureds with respect to such liability ~~and other~~ insurance purchased and maintained by Contractor for the Project.
- D. ~~Owner and~~ Engineer shall ~~each~~ deliver to the ~~other~~ Owner certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished ~~prior to commencement of~~ contemporaneously with Engineer's ~~services execution of this Agreement~~ and at renewals thereafter during the life of the Agreement except as otherwise provided in Exhibit G. Engineer shall not perform any services until the Owner has approved Engineer's certificate of insurance.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's ~~and its Consultants'~~ interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer ~~or its Consultants~~, or any insureds, additional insureds, or loss payees thereunder.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and ~~that renewal~~ that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

#### 6.05 Suspension and Termination

- A. Suspension:

1. By Owner: At no additional cost to Owner, Owner may suspend the Project for up to 90 consecutive days upon seven days written notice to Engineer.

~~2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.~~

2. By Engineer: If Owner fails to make payments to Engineer in accordance with this Agreement, such failure shall be considered substantial nonperformance and Engineer may suspend performance of services under this Agreement upon thirty (30) days' written notice to Owner during which period Owner may cure its nonperformance by making payment of all sums due to Engineer and not in dispute.

3. In the event of a suspension of services, Engineer shall have no liability to Owner for delay or damage suffered by Owner because of such suspension of services. Engineer shall resume its performance of services upon receipt of all amounts due and not reasonably disputed by Owner.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. By Owner:

1) ~~a. By either party upon 30 days~~ Owner may terminate this Agreement upon not less than seven (7) days' written notice ~~in the event of substantial failure by the other party should Engineer substantially fail~~ to perform in accordance with the terms ~~hereof through no fault of the terminating party~~ of this Agreement. Should Owner exercise its right of termination, the written notice shall set forth the nature of such failure.

b. By Engineer:

1) ~~upon~~ Upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; ~~or~~ after being provided a written summary from Engineer explaining why such services cannot be furnished or performed; or

2) If Owner suspends the Project for more than ninety (90) consecutive days for reasons other than the fault of Engineer, Engineer may terminate this Agreement at anytime thereafter by giving not less than thirty (30) days' written notice to Owner provided that the Project has not resumed prior to such notice.

2) ~~upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.~~

3) Engineer shall have no liability to Owner ~~on account of such termination~~ if Engineer terminates for cause.

c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph ~~6.05.B.1.a~~ 6.05.B.1.b if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* ~~The~~ Unless otherwise demanded by Owner, the terminating party under Paragraph 6.05.B may set the effective date of termination ~~at a time up to~~ 30 days later than otherwise ~~provided~~ required to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.05 B.1.b or 6.05.B.2, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the ~~limited~~ right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.

2. In the event of a termination by Owner for convenience ~~or by Engineer for cause~~, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and ~~to receive~~ payment of ~~a reasonable amount for services and expenses~~ costs incurred by Engineer directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C. In no event shall the costs invoiced by Engineer pursuant to this Paragraph 6.05.D.2 exceed \$5,000.

3. Under no circumstances shall Engineer be entitled to incidental, consequential, special or punitive damage or lost or anticipated profits from Owner.

#### 6.06 *Controlling Law*

- A. This Agreement is to be governed by the ~~law of the state or jurisdiction in which the Project is located~~ laws of the Commonwealth of Pennsylvania.

#### 6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
  2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
  3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents to extent set forth in the "Standard General Conditions of the Construction Contract" as prepared by Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition), as modified by Owner's legal counsel.

#### 6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. ~~If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.~~



## 6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall (1) notify Owner and (2) allow the Owner the opportunity to notify appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to undisclosed Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then ~~Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains the~~ Owner will retain appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; ~~and (2) warrants that the Site is~~ in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then ~~the Engineer shall have the option of (1) accepting an~~ be entitled equitable adjustment in its compensation or in the time of completion, ~~or both; or (2) terminating this Agreement for cause on 30 days notice.~~
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.
- G. Owner has provided or made available to Engineer with the following reports detailing Hazardous Environmental Conditions:

1.

2. \_\_\_\_\_

## 6.10 Indemnification and ~~Mutual~~ Waiver

- ~~A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants,~~

~~and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."~~

~~B. Indemnification by Owner: Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.~~

~~C. Environmental Indemnification: To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.~~

~~D. Percentage Share of Negligence: To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.~~

A. Indemnification by Engineer: Engineer shall indemnify, defend and hold harmless (immediately upon demand) the Owner, its elected officials, directors, officers and employees, from and against any and all third party claims, losses, damages, expenses, costs or other liabilities, including reasonable attorneys' fees, arising out of, or resulting from any breach of the provisions set forth herein and/or the error or negligent act or omission of Engineer or its Consultants, or any of their directors, officers, agents and/or employees or anyone directly or indirectly employed by them or anyone whose acts or omissions they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Engineer shall further indemnify, defend and hold harmless (immediately upon demand) the Owner, its directors, officers and employees from and against any and all claims made for infringement of any copyright, trademark or patent arising out of the use of any plans, designs, drawings or specifications furnished by Engineer in the performance of this Agreement

B. Intentionally deleted.



C. Intentionally deleted.

D. Intentionally deleted.

~~E. Mutual E.~~ Waiver: To the fullest extent permitted by law, ~~Owner and Engineer waive against each other, and the other's~~ Engineer waives against the Owner, and the Owner's elected officials, employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

#### 6.11 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

#### F. Equal Opportunity:

1. Engineer will not discriminate against any employees or applicant for employment because of race, color, religion, sex, or national origin. Engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Owner may elect to provide Engineer with the required form of notice.

2. Engineer will, in all solicitations or advertisements for employees placed by or on behalf of Engineer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
  3. In the event of Engineer's noncompliance with the non-discrimination clauses above or with any applicable laws, this Agreement may be canceled, terminated, or suspended in whole, or in part and Engineer may be declared ineligible for further contracts with Owner.
  4. Engineer shall include the subparagraphs set forth in this Paragraph 6.11.F.4 in every subcontract or purchase order unless exempted.
- G. *Employment of Certain Persons Prohibited.* No person who, at the time, is serving sentence in a penal or correctional institution shall be employed on the work covered by this Agreement.
- H. *Right to Audit Records.* Owner shall be entitled to audit the books and records of Engineer or any of its Consultants to the extent that such books and records relate to this Agreement or the performance of the Project. Such books and records shall be maintained by Engineer and its Consultants for a period of three (3) years from the date of final payment under this Agreement unless a shorter period is otherwise authorized in writing.
- I. *Dissemination of Information.* During the term of this Agreement, Engineer shall not release any information related to the Project or performance of services under this Agreement, nor publish any report or documents relating to Owner, the account or performance of services this Agreement without prior written consent of Owner. Engineer shall indemnify and hold harmless Owner, its officers, agents, elected officials and employees from all liability or damages which may be incurred by reason of Engineer's unapproved dissemination, publication and distribution, or circulation, in any manner whatsoever, of any information, data, documents, or material pertaining to Owner, the account or this Agreement by Engineer or its agents or employees.

## ARTICLE 7 – DEFINITIONS

### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer ~~in accordance with Part 2 of Exhibit A of this Agreement~~ not within scope of Basic Services.
  2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.

3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with ~~Part I of Exhibit A of~~ this Agreement for the completion of the Project.
5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material. Provided, however, the sewage (including all constituents therein) treated at the Site, substances used to treat sewage at the Site or materials otherwise stored and used at the Site in commercially reasonable methods for the operation of the 6<sup>th</sup> Street P.S. shall not be a Constituent of Concern.
8. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

10. *Contractor* – The entity or individual or, in the case of multiple prime contractors, entities or individuals, with which Owner has entered into a Construction Contract.
11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
13. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
14. *Engineer* – The individual or entity named as such in this Agreement.
15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which ~~the~~ Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
18. *PCBs* – Polychlorinated biphenyls.
19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer ~~as an Additional Service~~ and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written

interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
24. *Resident Project Representative* – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or “RPR” includes any assistants or field staff of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
25. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
26. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
27. *Site* – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
28. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
29. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
30. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
31. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
32. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to

properties, Owner's costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

33. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

## ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:* Unless otherwise indicated, references to this Agreement shall be interpreted to include the main body of this Agreement and the Schedules. In interpreting this Agreement and resolving any conflicts, inconsistencies, discrepancies or ambiguities between and/or within this Agreement and the Schedules attached hereto, the main body of this Agreement takes precedence over the Schedules. Any conflict, inconsistency, discrepancy or ambiguity between or among the Schedules shall be governed by the provisions of the Schedules in the following listed order:

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, ~~Duties, Responsibilities and Limitations of Authority of Resident Project Representative.~~ INTENTIONALLY DELETED
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, ~~Construction Cost Limit.~~ INTENTIONALLY DELETED
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, ~~Limitations of Liability.~~ INTENTIONALLY DELETED
- J. Exhibit J, ~~Special Provisions.~~ INTENTIONALLY DELETED
- K. Exhibit K, Form Amendment to Owner-Engineer Agreement.

~~[NOTE TO USER: If an exhibit is not included, indicate "not included" after the listed exhibit item]~~

L. Exhibit L, Owner's RFP.

M. Exhibit M, Engineer's Proposal.



#### 8.02 *Total Agreement:*

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit K to this Agreement.

#### 8.03 *Designated Representatives:*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

#### 8.04 *Engineer's Certifications:*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
  - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

[\[Signatures on the following page\]](#)

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.**

Owner:

Engineer:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Engineer License or Firm's

Certificate No. \_\_\_\_\_

State of: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Designated Representative (Paragraph 8.03.A):

Designated Representative (Paragraph 8.03.A):

\_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_



This is **EXHIBIT A**, consisting of       12 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated       .

## **Engineer's Services**

---

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic ~~and Additional~~ Services as set forth ~~below~~in the Agreement, this Exhibit A, the RFP and Engineer's Proposal as if a single, integrated scope of services.

### **PART 1 ~~—~~ BASIC SERVICES**

#### **A1.02 Study ~~and Report~~ Phase**

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project and available data.
2. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B which are not part of Engineer's Basic Services.
3. ~~Identify~~Concurrent with preparing the Preliminary Design Documents, identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.
4. Identify and evaluate ~~[insert specific number or list here]~~ alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.
5. ~~Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs.~~
6. ~~Perform or provide the following additional Study and Report Phase tasks or deliverables: [here list any such tasks or deliverables]~~
7. ~~Furnish        review copies of the Report and any other deliverables to Owner within        calendar days of the Effective Date and review it with Owner.~~

~~Within \_\_\_\_ calendar days of receipt, Owner shall submit to Engineer any comments regarding the Report and any other deliverables.~~

- ~~8. Revise the Report and any other deliverables in response to Owner's comments, as appropriate, and furnish \_\_\_\_ copies of the revised Report and any other deliverables to the Owner within \_\_\_\_ calendar days of receipt of Owner's comments.~~

~~B. Engineer's services under the Study and Report Phase will be considered complete on the date when the revised Report and any other deliverables have been delivered to Owner.~~

5. Review all reports related to site and environmental conditions provided by the Owner and perform any and all additional site and environmental investigation necessary to design the Project in accordance with the standard of care set forth in Paragraph 6.01.A.

6. Engineer shall perform the services required under the Study Phase as necessary throughout the entire Project as determined necessary by the Engineer in accordance with the standard of care set forth in Paragraph 6.01.A.

#### A1.03 Preliminary Design Phase

~~A. After acceptance by Owner of the Report and any other deliverables, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon written authorization from Owner, Engineer shall:~~

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
4. Based on the information contained in the Preliminary Design Phase documents, prepare ~~a~~ revised an opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.

~~5. Perform or provide the following additional Preliminary Design Phase tasks or deliverables: [here list any such tasks or deliverables]~~

5. 6. ~~Furnish review~~ three hard copies and one electronic copy of the Preliminary Design Phase documents and any other deliverables to Owner within 100 calendar days of authorization to proceed with this phase, and review them with Owner. Within 20 calendar days of receipt, Owner shall submit to Engineer any comments regarding the Preliminary Design Phase documents and any other deliverables.

- ~~6.~~ ~~7.~~ Revise the Preliminary Design Phase documents and any other deliverables in response to Owner's comments, as appropriate, and furnish to Owner three hard copies and one electronic copy of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within 30 calendar days after receipt of Owner's comments.

- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner.

#### A1.04 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.

2. Provide technical criteria, written descriptions, and design data for ~~Owner's~~ Engineer's use in filing applications ~~for permits from (to be signed by Owner) for permits from~~ or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.

3. Advise Owner of any adjustments to the opinion of probable Construction Cost known to Engineer.

- ~~4. Perform or provide the following additional Final Design Phase tasks or deliverables:  
[here list any such tasks or deliverables]~~

- ~~4. Intentionally deleted.~~

5. ~~Prepare~~ Prior to preparing the bidding documents, review and comment on Owner's template Division 00 bidding documents. Engineer shall ensure Owner's legal counsel has sufficient information and at least two weeks prior to Engineer's deadline for submission of draft bidding documents to Owner for Owner's legal counsel to prepare of Division 00 of the bidding documents. In coordination with the Owner's legal counsel, prepare and furnish bidding documents for review by Owner, its legal counsel, and other advisors, and assist Owner in the preparation of other related documents. Within 30 days of receipt of the complete set of bidding documents, Owner shall submit to Engineer any comments and, subject to the provisions of Paragraph 6.01.G, instructions for revisions.

6. Revise the bidding documents in accordance with comments and instructions from the Owner, as appropriate, and submit 5 final copies of the bidding documents, a revised

opinion of probable Construction Cost, and any other deliverables to Owner within 15 calendar days after receipt of Owner's comments and instructions.

- B. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by Paragraph A1.03.A.6 have been delivered to Owner.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding~~—or—Negotiating~~, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is  . If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

#### A1.05 *Bidding ~~or Negotiating~~ Phase*

- A. After acceptance by Owner of the bidding documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
  - 1. Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the bidding documents.
  - 2. Issue addenda as appropriate to clarify, correct, or change the bidding documents.
  - 3. Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.
  - 4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the bidding documents.
  - 5. If bidding documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.
  - 6. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.

7. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables: [here list any such tasks or deliverables]

B. The Bidding ~~or Negotiating~~ Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

#### A1.06 Construction Phase

A. Upon successful completion of the Bidding ~~and Negotiating~~ Phase, and upon written authorization from Owner, Engineer shall:

1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the Construction Contract shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

~~2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D. [If Engineer will not be providing the services of an RPR, then delete this Paragraph 2 by inserting the word "DELETED" after the paragraph title, and do not include Exhibit D.]~~

2. *Intentionally deleted.*

3. *Selecting Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.0.
4. *Pre-Construction Conference:* Participate in a Pre-Construction Conference prior to commencement of Work at the Site.
5. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
6. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
7. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:

- a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, ~~and the Resident Project Representative, if any,~~ are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
- b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.
8. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents, or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
9. *Clarifications and Interpretations; Field Orders:* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue field orders authorizing minor variations in the Work from the requirements of the Contract Documents.



10. *Change Orders and Work Change Directives*: Recommend change orders and work change directives to Owner, as appropriate, and prepare change orders and work change directives as required.
11. *Shop Drawings and Samples*: Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
12. *Substitutes and "or-equal"*: Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, ~~but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A~~ at no additional compensation from Owner. Engineer shall be entitled to include a provision in the General Conditions that permit it to recover compensation at its hourly rates for its time reviewing substitutes and "or equal" products directly from the proposing Contractor.
13. *Inspections and Tests*: Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.
14. *Disagreements between Owner and Contractor*: Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
15. *Applications for Payment*: Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
  - a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of

Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).

- b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
16. *Contractor's Completion Documents:* Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under Paragraph A1.05.A.11, and transmit the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in Paragraph A1.05.A.11.
17. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Project to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.



~~18. Additional Tasks: Perform or provide the following additional Construction Phase tasks or deliverables: [here list any such tasks or deliverables].~~

18. Intentionally deleted.

19. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of Paragraph A1.05.A.15.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.

- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.C, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.
- C. *Limitation of Responsibilities:* Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A1.07 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of defective Work, if any.
  2. Together with Owner or Owner's representative, visit the Project within one month before the end of the correction period to ascertain whether any portion of the Work is subject to correction.

~~1. Perform or provide the following additional Post-Construction Phase tasks or deliverables: [Here list any such tasks or deliverables]~~

- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

## PART 2 – ADDITIONAL SERVICES

### A2.01 *Additional Services Requiring Owner's Written Authorization*

~~A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below:~~

A. In the event Engineer determines that any Additional Services are necessary after the Effective Date, Engineer shall submit a proposal to Owner's Managing Director setting forth in reasonable detail the scope of such Additional Services, the estimated time and price of performing the Additional Services and any potential impact on the then-existing Basic Services and any fees related thereto. Engineer shall obtain the prior written approval from the Owner's Managing Director before performing any Additional Services. Engineer shall not be entitled to additional compensation for any work or materials associated with Additional Services unless it received such prior approval. If approved by Owner's Managing Director, Engineer shall perform or cause to be performed such Additional Services in accordance with the terms of the Agreement and in concert with all other Basic Services.

- ~~1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.~~
- ~~2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.~~
- ~~3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.~~
- ~~4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in Paragraph A1.01.A.4.~~
- ~~5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.~~

- ~~6. Providing renderings or models for Owner's use.~~
- ~~7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.~~
- ~~8. Furnishing services of Consultants for other than Basic Services.~~
- ~~9. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.~~
- ~~10. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.~~
- ~~11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.~~
- ~~12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.~~
- ~~13. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.~~
- ~~14. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.6, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.~~
- ~~15. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor.~~
- ~~16. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.~~
- ~~17. Preparing Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing such Record Drawings to Owner.~~
- ~~18. Preparation of operation and maintenance manuals.~~

- ~~19. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.~~
- ~~20. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.~~
- ~~21. Assistance in connection with the adjusting of Project equipment and systems.~~
- ~~22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.~~
- ~~23. Assistance to Owner in developing procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related record-keeping.~~
- ~~24. Overtime work requiring higher than regular rates.~~
- ~~25. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.~~

~~A2.02 Additional Services Not Requiring Owner's Written Authorization~~

~~A. Engineer shall advise Owner in advance that Engineer is will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.~~

- ~~1. Services in connection with work change directives and change orders to reflect changes requested by Owner.~~
- ~~2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.~~
- ~~3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.~~
- ~~4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.~~

- ~~5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.~~
- ~~6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.~~
- ~~7. Services during the Construction Phase rendered after the original date for completion of the Work referred to in A1.05.B.~~
- ~~8. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.~~
- ~~9. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites.~~

DRAFT

This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated       ,       .

## **Owner's Responsibilities**

---

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of ~~all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of~~ Owner's standard forms, conditions, and related documents for Engineer to include in the ~~Bidding Documents~~bidding documents, when applicable.
- B. Furnish to Engineer any other available information in Owner's possession pertinent to the Project including reports and data relative to previous designs, operations and maintenance manuals for the 6<sup>th</sup> Street P.S. and/or investigation at or adjacent to the Site. Provided, however, Engineer's use of any information provided by Owner shall be subject to any copywrite restrictions that may apply and Engineer shall be responsible for determining and obtaining any necessary licenses for the use of such information.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request (to the extent not required to be performed by the Engineer as a Basic Service), furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services (unless such information is required as a Basic Service). Such additional information or data would generally include the following:
  1. Property descriptions.
  2. Zoning, deed, and other land use restrictions.
  3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.

5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
  6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
- E. Authorize Engineer to provide Additional Services as ~~set forth in Part 2 of Exhibit A of the Agreement as required~~ deemed necessary or convenient by Owner in its sole discretion.
- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. ~~Provide~~ To the extent not required to be procured by Engineer as a Basic Service, provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory, independent cost estimating (excluding the determination of the probable Cost of Construction), and insurance counseling services.
  2. Legal services with regard to issues pertaining to the Project ~~as Owner requires, Contractor raises, or Engineer reasonably requests~~.
  3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
- J. Place and pay for advertisement for Bids in appropriate publications to the extent not required of Engineer as a Basic Service.
- K. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and ~~constructibility review~~ constructability review.



L. Intentionally deleted.

~~L. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.~~

~~M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.~~

M. Owner may designate a program manager to, in addition to, Engineer represent Owner at the Site. Engineer shall coordinate its services with a program manager, if appointed by Owner.

N. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, ~~and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.~~

O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.

P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.

Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.

R. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.

~~S. Perform or provide the following additional services: [Here list any such additional services].~~

~~(for use with E-500, 2008 Edition)~~



This is **EXHIBIT C**, consisting of 4 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated \_\_\_\_\_, \_\_\_\_\_.

**Payments to Engineer for Services and Reimbursable Expenses**

**COMPENSATION PACKET ~~BC-1~~: Basic Services – ~~Lump Sum~~ Not to Exceed**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

C2.01 Compensation for Basic Services (~~other than Resident Project Representative~~) ~~Lump Sum~~ Not to Exceed Method of Payment

A. The total compensation for all Basic Services shall not exceed \$ \_\_\_\_\_ (the “Not to Exceed Fee”), as determined by the cumulative hours charged to the Project by each class of Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project attached to this Exhibit C as Appendix 2.

B. ~~A.~~ Owner shall pay Engineer for Basic Services set forth ~~in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:~~ as follows:

1. The maximum allowable amount (as identified in dollars and percent) of the total Not to Exceed Fee, as broken down for each phase, shall be:

~~1. A Lump Sum amount of \$ \_\_\_\_\_ based on the following estimated distribution of compensation:~~

- |                                             |                     |
|---------------------------------------------|---------------------|
| a. Study <del>and Report</del> Phase        | \$ _____ ( _____ %) |
| b. Preliminary Design Phase                 | \$ _____ ( _____ %) |
| c. Final Design Phase                       | \$ _____ ( _____ %) |
| d. Bidding <del>and Negotiating</del> Phase | \$ _____ ( _____ %) |
| e. Construction Phase                       | \$ _____ ( _____ %) |
| f. Post-Construction Phase                  | \$ _____ ( _____ %) |

2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, ~~but shall not exceed the total Lump Sum amount unless~~ if approved in writing advance by the Owner in writing.

3. The ~~Lump Sum~~ Not to Exceed Fee includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the ~~Lump Sum~~ Not to Exceed Fee to account for labor, overhead, ~~and profit, and Reimbursable Expenses.~~
4. The portion of the ~~Lump Sum amount~~ Not to Exceed Fee billed for Engineer's services will be based upon Engineer's ~~estimate of the percentage~~ hours of the total services actually completed during the billing period.

5. The Standard Hourly Rates and Reimbursable Expenses Schedule shall not be adjusted.

- C. ~~B. Period of Service:~~ The compensation amount stipulated in Compensation Packet ~~BC-1 is conditioned on a period of service not exceeding \_\_\_\_\_ months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.~~ is to compensate Engineer for all Basic Services regardless of the period required to perform Basic Services unless otherwise provided for in the Agreement.

C2.02 *Compensation For Reimbursable Expenses*

- A. Owner shall pay Engineer for all Reimbursable Expenses (excluding permit application fees) at the rates set forth in Appendix 1 to this Exhibit C, not to exceed \$ \_\_\_\_\_.
- B. Reimbursable Expenses subject to the not to exceed limit in Section C2.02.A include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, ~~Bidding Documents~~ bidding documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. Owner shall reimburse Engineers for any payments to governmental agencies associated with obtaining permits, licenses or approvals for the Project. Permit fees shall not be subject to the not to exceed limit in Section C2.02.A. Notwithstanding, Engineer shall notify Owner of the estimated fee as soon as reasonably practicable.
- D. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, ~~the latter multiplied by a factor of \_\_\_\_\_.~~ without markup.
- E. In order to be entitled to reimbursement for Project-related internal Reimbursable Expenses, Engineer shall provide an itemized invoice of each expense and the date such Reimbursable Expense was incurred. In order to be entitled to reimbursement for external Reimbursable Expenses, Engineer shall submit to Owner copies of third party invoices, bills or vouchers identifying third party costs.

## C2.03 Other Provisions Concerning Payment

- A. ~~Whenever~~ Subject to the limitations to Engineer's compensation in Paragraph C.2.01, above, whenever Engineer is entitled to compensation for the charges of Engineer's Consultants performing Basic Services, those charges shall be ~~the amounts billed by Engineer's Consultants to Engineer times a factor of \_\_\_\_\_~~ in accordance with the hourly rates set forth in Appendix 2 to Exhibit C.

## C2.04 Invoicing

1. By the 15th of each month, Engineer shall submit a detailed invoice to Owner by electronic mail, which identifies the specific tasks of the services performed by Engineer and/or its Consultants in the preceding month. Each invoice shall clearly set forth in single line items: a detailed description of each action performed by each person (with their corresponding billing rate) and the time required to perform such action to the nearest quarter of an hour. The invoice shall also generally describe the relative percentage of completion for each Phase, the total cumulative amount invoiced for each Phase, the total remaining compensation for completing each Phase, any supporting documentation and the overall percentage of the Project's Basic Services completed as of the date of such invoice. Progress reports shall accompany each invoice in MS Word format.
2. If the Owner reasonably determines that Engineer's invoice lacks sufficient detail or is inappropriately block billed, the Owner shall notify Engineer promptly and Owner shall have no obligation to make payment on a rejected invoice until corrected. Engineer shall revise the invoice in accordance with the requirements of this Agreement and resubmit to the Owner.
3. No payments made under this Agreement shall be evidence of the proper performance of this Agreement, either in whole or in part, and no payment, including the final payment, shall be construed to be an acceptance of defective or improper services or relieve the Consultant of its responsibility to perform its services in a professional manner and in accordance with the terms of this Agreement.
4. In the event of any dispute between the Owner and the Consultant as to the percentage or quality of work completed or the absence of supporting documentation, the Owner shall not be obligated to pay the amount in dispute until a final resolution of the dispute. Unless the parties expressly agree otherwise in writing, in the event a dispute arises under this Agreement in connection with payments to be made on any invoice, or otherwise, Engineer, shall continue to perform its duties and responsibilities under this Agreement, including, without limitation, the Services, during the pendency of such dispute.

- ~~B. Factors.—The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.~~

~~C.—~~

*~~Estimated Compensation Amounts:~~*

- ~~1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.~~
  - ~~2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.~~
5. ~~D.~~ To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **Appendix 1 to EXHIBIT C**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated , \_\_\_\_\_.

### **Reimbursable Expenses Schedule**

---

~~Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C.~~ Reimbursable expenses for services performed ~~on the date of~~ in connection with the Agreement are:

\_\_\_\_\_ Fax \_\_\_\_\_ \$ \_\_\_\_\_/page  
\_\_\_\_\_ 8"x11" Copies/Impressions \_\_\_\_\_/page  
\_\_\_\_\_ Blue Print Copies \_\_\_\_\_/sq. ft.

NOTE – The Reimbursable Expense Schedule will be filled in based on the RFP and Proposal.

Reproducible Copies (Mylar)	_____	/sq. ft.
Reproducible Copies (Paper)	_____	/sq. ft.
Mileage (auto)	_____	/mile
Field Truck Daily Charge	_____	/day
Mileage (Field Truck)	_____	/mile
Field Survey Equipment	_____	/day
Confined Space Equipment	_____	/day plus expenses
Resident Project Representative Equipment	_____	/month
Specialized Software	_____	/hour
CAD Charge	_____	/hour
CAE Terminal Charge	_____	/hour
Video Equipment Charge	_____	/day, \$ _____/week, or \$ _____/month
Electrical Meters Charge	_____	/week, or \$ _____/month
Flow Meter Charge	_____	/week, or \$ _____/month
Rain Gauge	_____	/week, or \$ _____/month
Sampler Charge	_____	/week, or \$ _____/month
Dissolved Oxygen Tester Charge	_____	/week
Fluorometer	_____	/week
Laboratory Pilot Testing Charge	_____	/week, or \$ _____/month
Soil Gas Kit	_____	/day
Submersible Pump	_____	/day
Water Level Meter	_____	/day, or \$ _____/month
Soil Sampling	_____	/sample
Groundwater Sampling	_____	/sample
Health and Safety Level D	_____	/day
Health and Safety Level C	_____	/day
Electronic Media Charge	_____	/hour
Long Distance Phone Calls	_____	at cost
Mobile Phone	_____	/day
Meals and Lodging	_____	at cost

*[Note to User: Customize this Schedule to reflect anticipated reimbursable expenses on this specific Project]*

This is **Appendix 2 to EXHIBIT C**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated , \_\_\_\_\_.

## **Standard Hourly Rates Schedule**

---

### *A. Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

### *B. Schedule:*

Hourly rates for services performed on or after the date of the Agreement are:

<b>Billing Class VIII</b>	\$ _____/hour
<b>Billing Class VII</b>	_____/hour
<b>Billing Class VI</b>	_____/hour
<b>Billing Class V</b>	_____/hour
<b>Billing Class IV</b>	_____/hour
<b>Billing Class III</b>	_____/hour
<b>Billing Class II</b>	_____/hour
<b>Billing Class I</b>	_____/hour
<b>Support Staff</b>	_____/hour

This is ~~EXHIBIT D~~, consisting of \_\_\_\_\_ pages,  
referred to in and part of the ~~Agreement between~~  
~~Owner and Engineer for Professional Services~~ dated  
~~\_\_\_\_\_~~.

*[Note to User: Delete this Exhibit D if Engineer will not be providing Resident Project Representative Services under Paragraph A1.05.A.2]*

**~~Duties, Responsibilities, and Limitations of Authority of Resident Project Representative~~**

~~Article 1 of the Agreement is supplemented to include the following agreement of the parties:~~

DRAFT



This is **EXHIBIT E**, consisting of 2 pages,  
referred to in and part of the **Agreement between  
Owner and Engineer for Professional Services** dated  
, \_\_\_\_.

---

NOTICE OF ACCEPTABILITY OF WORK

---

**PROJECT:**

**OWNER:**

**CONTRACTOR:**

**OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:**

**EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:**

**ENGINEER:**

NOTICE DATE: \_\_\_\_\_

**To:**

\_\_\_\_\_  
**Owner**

**And To:**

\_\_\_\_\_  
**Contractor**

**From:**

\_\_\_\_\_  
**Engineer**

~~The~~ Engineer hereby gives notice to the above Owner and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated \_\_\_\_\_, \_\_\_\_\_, and the terms and conditions set forth in this Notice.

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_

### **CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK**

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner and under the Construction Contract referred to in this Notice, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement and Construction Contract.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract referred to in this Notice, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

This is ~~EXHIBIT F~~, consisting of \_\_\_\_\_ pages,  
referred to in and part of the ~~Agreement between  
Owner and Engineer for Professional Services~~ dated  
, \_\_\_\_\_.

### **Construction Cost Limit**

Paragraph 5.02 of the Agreement is supplemented to include the following agreement of the parties:

#### ***F5.02—Designing to Construction Cost Limit***

- ~~A. Owner and Engineer hereby agree to a Construction Cost limit in the amount of \$\_\_\_\_\_.~~
- ~~B. A bidding or negotiating contingency of \_\_\_\_\_ percent will be added to any Construction Cost limit established.~~
- ~~C. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.~~
- ~~D. Engineer will be permitted to determine what types and quality of materials, equipment and component systems are to be included in the Drawings and Specifications. Engineer may make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound engineering practices, to bring the Project within the Construction Cost limit.~~
- ~~E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer. In such cases, Owner shall consent to an adjustment in the Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.~~
- ~~F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The providing of such services will be the limit of Engineer's responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.~~

This is **EXHIBIT G**, consisting of 3 pages,  
referred to in and part of the **Agreement between  
Owner and Engineer for Professional Services** dated  
, \_\_\_\_.

## **Insurance**

Paragraph 6.04 of the Agreement is supplemented to include the following agreement of the parties.

### **G6.04 Insurance**

A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:

1. By Engineer:

a. Workers' Compensation:

Statutory

b. Employer's Liability --

1) Each Accident:

\$ 100,000

2) Disease, Policy Limit:

\$ 500,000

3) Disease, Each Employee:

\$ 100,000

c. General Liability --

1) Each Occurrence (Bodily Injury and Property Damage):

\$ 1,000,000

2) ~~General~~ Annual Aggregate:

\$ 2,000,000

3) Products and Completed Operations (per Project aggregate) \$2,000,000

4) Personal and Advertising Injury \$1,000,000

d. Excess or Umbrella Liability --

1) Each Occurrence:

\$ 2,000,000

2) General Aggregate:

\$ 2,000,000

Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):

Each Accident

\$ 1,000,000

e. Professional Liability –

1) Each Claim Made

\$ 5,000,000

2) Annual Aggregate

\$ 5,000,000

~~g. Other (specify):~~ \$ \_\_\_\_\_

2. By Owner:

a. Workers' Compensation:

Statutory

~~b. Employer's Liability --~~

~~1) Each Accident~~

~~\$ \_\_\_\_\_~~

~~2) Disease, Policy Limit~~

~~\$ \_\_\_\_\_~~

~~3) Disease, Each Employee~~

~~\$ \_\_\_\_\_~~

b. ~~e.~~ General Liability --

~~1) General Aggregate:~~

~~\$ \_\_\_\_\_~~

1) ~~2)~~ Each Occurrence (Bodily Injury and Property Damage):

\$ 1,000,000

2) Aggregate:

\$1,000,000

c. ~~d.~~ Excess or Umbrella Liability --

~~1) Each Occurrence:~~

~~\$ \_\_\_\_\_~~

~~2) General Aggregate:~~

~~\$ \_\_\_\_\_~~

~~e. Automobile Liability -- Combined Single Limit (Bodily Injury and Property Damage):~~

~~Each Accident:~~

~~\$ \_\_\_\_\_~~

~~f. Other (specify):~~ \$ \_\_\_\_\_

~~B. Additional Insureds:~~

1) Each Occurrence:

\$4,000,000

2) Aggregate:

\$4,000,000

d. Premises Pollution Liability

1) Per condition:

\$1,000,000

2) Aggregate:

\$1,000,000

B. Prior to commencement of the performance of the Agreement, Engineer shall furnish to Owner a certificate of insurance evidencing all required coverage in at least the limits required herein, naming the City of Reading, its elected officials, agents, and employees as Additional Insured for “ongoing operations” and “products and completed operations” for a period of three years after final payment under the General and Professional Liability Coverages. Coverage should be provided by ISO Endorsements CG20 10 07 04 and CG2037 07 04 or their equivalent. Engineer’s Commercial General Liability and Umbrella/Excess Policy shall be Primary to and will not require contribution from any other insurance under which the Additional Insured is a Named Insured. To the fullest extent permitted by applicable state law, all policies shall contain a Waiver of Subrogation Clause. The Certificate shall note the Project and provide that no policies may be cancelled without thirty (30) days advance written notice to Owner. Such certificate shall be issued to: City of Reading, Attn: Risk and Safety Coordinator, 815 Washington Street, Reading, PA 19601. All insurance policies shall be in effect with companies holding an A.M. Best rating of “A-” or better or financial rating of IX or better with the A.M. Best’s Company Key Rating, Guide Latest Edition and shall be licensed or authorized to do business in the Commonwealth of Pennsylvania. Said policies shall remain in full force and effect until the expiration of the terms of the Agreement or until completion of all duties to be performed hereunder by Engineer, whichever shall occur later.

~~1. The following persons or entities are to be listed on Owner’s general liability policies of insurance as additional insureds, and on any applicable property insurance policy as loss payees, as provided in Paragraph 6.04.B:~~

a:

~~Engineer~~

b:

~~Engineer’s Consultant~~

e:

~~Engineer’s Consultant~~

~~2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner’s general liability and property policies of insurance.~~

~~3. The Owner shall be listed on Engineer’s general liability policy as provided in Paragraph 6.04.A.~~

This is **EXHIBIT H**, consisting of 1 pages,  
referred to in and part of the **Agreement between  
Owner and Engineer for Professional Services** dated  
, \_\_\_\_.

## Dispute Resolution

---

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

~~[NOTE TO USER: Select one of the two alternatives provided]~~

### H6.08 Dispute Resolution

A. Either Owner or Engineer may request mediation of any dispute between the parties. The mediation will be governed by the Berks County Bar Association Mediation Rules in effect as of the Effective Date of the Agreement.

B. In the event that the Owner and Engineer do not agree upon a mediator within ten (10) days of the request for mediation, both agree that the Berks County Bar Association will immediately appoint a mediator who will serve and comply with the aforementioned timeframe.

C. Owner and Engineer shall participate in the mediation process in good faith in Berks County, Pennsylvania. Unless otherwise mutually agreed, neither party shall be obligated to continue with the mediation in excess of sixty (60) days after the appointment of a mediator.

D. If Owner and Engineer are unable to resolve the dispute in mediation, all actions and disputed arising out of or relating to this Agreement shall be resolved by a non-jury trial and shall be brought in the Court of Common Pleas of Berks County, Pennsylvania or the United States District Court for the Eastern District of Pennsylvania and not elsewhere.

~~A. *Mediation:* Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by [insert name of mediator, or mediation service]. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.~~

~~{or}~~

~~A. *Arbitration:* All Disputes between Owner and Engineer shall be settled by arbitration in accordance with the [here insert the name of a specified arbitration service or organization] rules~~

~~effective at the Effective Date, subject to the conditions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this Paragraph H6.08.A will be specifically enforceable under prevailing law of any court having jurisdiction.~~

- ~~1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the [specified arbitration service or organization]. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.~~
- ~~2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$\_\_\_\_\_ (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute if the amount in controversy in such Dispute is more than \$\_\_\_\_\_ (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$\_\_\_\_\_ (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.~~
- ~~3. The award rendered by the arbitrators shall be in writing, and shall include: (i) a precise breakdown of the award; and (ii) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.~~
- ~~4. The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.~~
- ~~5. If a Dispute in question between Owner and Engineer involves the work of a Contractor, Subcontractor, or consultants to the Owner or Engineer (each a "Joinable Party"), and such Joinable Party has agreed contractually or otherwise to participate in a consolidated arbitration concerning this Project, then either Owner or Engineer may join such Joinable Party as a party to the arbitration between Owner and Engineer hereunder. Nothing in this Paragraph H6.08.A.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.~~



This is ~~EXHIBIT I~~, consisting of \_\_\_\_\_ pages,  
referred to in and part of the ~~Agreement between  
Owner and Engineer for Professional Services~~ dated  
, \_\_\_\_\_.

## **Limitations of Liability**

---

Paragraph 6.10 of the Agreement is supplemented to include the following agreement of the parties:

### *A. ~~Limitation of Engineer's Liability~~*

***[NOTE TO USER: Select one of the three alternatives listed below for I6.10 A.1]***

1. ~~Engineer's Liability Limited to Amount of Engineer's Compensation:~~ To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total compensation received by Engineer under this Agreement.

~~[or]~~

1. ~~Engineer's Liability Limited to Amount of Insurance Proceeds:~~ Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's Claims shall not exceed \$ \_\_\_\_\_ ~~[or]~~

1. ~~Engineer's Liability Limited to the Amount of \$\_\_\_\_\_:~~ Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total amount of \$\_\_\_\_\_.
- 

~~[NOTE TO USER: If appropriate and desired, include I6.10.A.2 below as a supplement to Paragraph 6.10, which contains a mutual waiver of damages applicable to the benefit of both Owner and Engineer]~~

2. ~~Exclusion of Special, Incidental, Indirect, and Consequential Damages:~~ To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.10, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants, and including but not limited to:

~~[NOTE TO USER: list here particular types of damages that may be of special concern because of the nature of the project or specific circumstances, e.g., cost of replacement power, loss of use of equipment or of the facility, loss of profits or revenue, loss of financing, regulatory fines, etc. If the parties prefer to leave the language general, then end the sentence after the word "employees"]~~

~~[NOTE TO USER: the above exclusion of consequential and other damages can be converted to a limitation on the amount of such damages, following the format of Paragraph I6.10.A.1 above, by providing that "Engineer's total liability for such damages shall not exceed \$\_\_\_\_\_."]~~

---

~~[NOTE TO USER: If appropriate and desired, include I6.10.A.3 below]~~

3. ~~Agreement Not to Claim for Cost of Certain Change Orders:~~ Owner recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer under this Agreement

~~(“Covered Change Orders”). Accordingly, Owner agrees not to sue or to make any claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders unless the costs of such approved Covered Change Orders exceed \_\_\_\_\_% of Construction Cost, and then only for an amount in excess of such percentage. Any responsibility of Engineer for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include any costs that Owner would have incurred if the Covered Change Order work had been included originally without any imprecision, incompleteness, error, omission, ambiguity, or inconsistency in the Contract Documents and without any other error or omission of Engineer related thereto. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, Engineer is liable for the cost of Covered Change Orders in excess of the percentage of Construction Cost stated above or for any other Change Order. Wherever used in this paragraph, the term Engineer includes Engineer’s officers, directors, members, partners, agents, employees, and Consultants.~~

~~**[NOTE TO USER: The parties may wish to consider the additional limitation contained in the following sentence.]**~~

~~Owner further agrees not to sue or to make any claim directly or indirectly against Engineer with respect to any Covered Change Order not in excess of such percentage stated above, and Owner agrees to hold Engineer harmless from and against any suit or claim made by the Contractor relating to any such Covered Change Order.]~~

~~**[NOTE TO USER: Many professional service agreements contain mutual indemnifications. If the parties elect to provide a mutual counterpart to the indemnification of Owner by Engineer in Paragraph 6.10.A, then supplement Paragraph 6.10.B by including the following indemnification of Engineer by Owner as Paragraph 16.10.B.]**~~

~~B. **Indemnification by Owner:** To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner’s officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.~~

This is ~~EXHIBIT J~~, consisting of \_\_\_\_\_ pages,  
referred to in and part of the ~~Agreement between  
Owner and Engineer for Professional Services~~ dated  
, \_\_\_\_\_.

### **Special Provisions**

---

Paragraph(s) \_\_\_\_\_ of the Agreement is/are amended to include the following agreement(s) of the parties:

DRAFT

This is **EXHIBIT K**, consisting of 2 pages,  
referred to in and part of the **Agreement between  
Owner and Engineer for Professional Services** dated  
, \_\_\_\_.

**FORM**

**AMENDMENT TO OWNER-ENGINEER AGREEMENT**

**Amendment No. \_\_\_\_**

1. *Background Data:*

- a. Effective Date of Owner-Engineer Agreement: \_\_\_\_\_
- b. Owner: \_\_\_\_\_
- c. Engineer: \_\_\_\_\_
- d. Project: \_\_\_\_\_

2. *Description of Modifications:*

~~[NOTE TO USER: Include the following paragraphs that are appropriate and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]~~

~~a. — Engineer shall perform or furnish the following Additional Services:~~

~~ba.~~ The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:

~~i.~~ \_\_\_\_\_

~~ii.~~ \_\_\_\_\_

~~eb.~~ The responsibilities of Owner are modified as follows:

~~i.~~ \_\_\_\_\_

~~ii.~~ \_\_\_\_\_

dc. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:

i.

ii.

ed. The schedule for rendering services is modified as follows:

i.

ii.

fe. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

i.

ii.

53. Agreement Summary ~~(Reference only)~~

- |                                     |    |       |
|-------------------------------------|----|-------|
| a. Original Agreement amount:       | \$ | _____ |
| b. Net change for prior amendments: | \$ | _____ |
| c. This amendment amount:           | \$ | _____ |
| d. Adjusted Agreement amount:       | \$ | _____ |

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is \_\_\_\_\_.

OWNER:

ENGINEER:

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date  
Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

This is **EXHIBIT L**, consisting of \_\_\_\_\_ pages,  
referred to in and part of the Agreement between  
Owner and Engineer for Professional Services dated  
\_\_\_\_\_.

**RFP**

---

DRAFT

This is **EXHIBIT M**, consisting of \_\_\_\_\_ pages,  
referred to in and part of the Agreement between  
Owner and Engineer for Professional Services dated  
\_\_\_\_\_.

**Proposal**

---

DRAFT